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BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-772, Sub 8
Docket No. P-913, Sub 5
Docket No. P-989, Sub 3
Docket No. P-824, Sub 6
Docket No. P-1202, Sub 4

COPY

In the Matter of)
)
Joint Petition NewSouth)
Communications Corp., et al. for)
Arbitration with BellSouth)
Telecommunications, Inc.)

Raleigh, North Carolina
Tuesday, December 14, 2004
Deposition of JERRY WILLIS,

a witness herein, called for examination by
counsel for the Joint Petitioners, in the
above-entitled action, pursuant to Notice, the
witness being duly sworn by Sarah K. Mills,
Court Reporter and Notary Public in and for the
State of North Carolina, taken at the Offices of
Parker Poe Adams & Bernstein, 150 Fayetteville
Street Mall, Suite 1400, Raleigh, North
Carolina, beginning at 9:10 a.m., on Tuesday,
December 14, 2004, such proceedings being taken
stenographically by Sarah K. Mills.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 On behalf of the Joint Petitioners</p> <p>4 Henry C. Campen, Jr</p> <p>5 Parker Poe Adams & Bernstein, LLP</p> <p>6 1400 Wachovia Capitol Center</p> <p>7 Raleigh, NC 27602-0389</p> <p>8</p> <p>9 John J. Heitmann</p> <p>10 Garret R. Hargrave</p> <p>11 Kelley Drye & Warren</p> <p>12 1200 19th Street, NW</p> <p>13 Suite 500</p> <p>14 Washington, DC 20036</p> <p>15</p> <p>16 On behalf of BellSouth</p> <p>17</p> <p>18 Jim Meza</p> <p>19 Robert A. Culpepper</p> <p>20 BellSouth Legal Department</p> <p>21 675 West Peachtree Street, NE</p> <p>22 Suite 4300</p> <p>23 Atlanta, GA 30375</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 STIPULATIONS</p> <p>2 Before testimony was taken it was</p> <p>3 stipulated by and between counsel representing</p> <p>4 the respective parties as follows:</p> <p>5</p> <p>6 1. That any defect in the notice of the</p> <p>7 taking of this deposition, either as to time or</p> <p>8 place, or otherwise as required by statute is</p> <p>9 expressly waived, and this deposition shall have</p> <p>10 the same effect as if formal notice in all</p> <p>11 respects as required by statute had been given</p> <p>12 and served upon the counsel in the manner</p> <p>13 prescribed by law.</p> <p>14 2. That this deposition shall be taken for</p> <p>15 the purpose of discovery or for use as evidence</p> <p>16 in the above-entitled action, or for both</p> <p>17 purposes.</p> <p>18</p> <p>19 3. That this deposition is deemed opened</p> <p>20 and all formalities and requirements with</p> <p>21 respect to the opening of the same, expressly</p> <p>22 including notice of the opening of this</p> <p>23 deposition, are hereby waived, and this</p> <p>24 deposition shall have the same effect as if all</p> <p>25 formalities in respect to the opening of the</p> <p>same had been complied with in detail.</p> <p>4 That the undersigned, Sarah K. Mills, a</p> <p>Notary Public is duly qualified and constituted</p> <p>to take this deposition.</p> <p>5 Objections to questions, except as to</p> <p>the form thereof, and motions to strike answers</p> <p>need not be made during the taking of the</p> <p>deposition, but may be reserved until any</p> <p>pretrial hearing held before any judge of any</p> <p>court of competent jurisdiction for the purpose</p> <p>of ruling thereon, or at any other hearing or</p> <p>trial of said case at which said deposition</p> <p>might be used, except that an objection as to</p> <p>the form of a question must be made at the time</p> <p>such a question is asked or objection is waived</p> <p>as to the form of the question.</p> <p>6 That the North Carolina Rules of Civil</p> <p>Procedure shall control concerning the use of</p> <p>the deposition in court.</p>																																														
<p style="text-align: right;">Page 3</p> <p>1 INDEX TO EXAMINATIONS & EXHIBITS</p> <p>2</p> <table border="0"> <tr> <td>3 Examination</td> <td>Page</td> </tr> <tr> <td>4</td> <td></td> </tr> <tr> <td>5 Direct by Mr. Meza</td> <td>5</td> </tr> <tr> <td>6 Direct by Mr. Culpepper</td> <td>72</td> </tr> <tr> <td>7</td> <td></td> </tr> <tr> <td>8 ---</td> <td></td> </tr> <tr> <td>9</td> <td></td> </tr> <tr> <td>10 Deposition Exhibit</td> <td>Page</td> </tr> <tr> <td>11 NO. 1 NC Supplemental Direct Testimony</td> <td>36</td> </tr> <tr> <td>12 NO. 2 Joint Petitioners NC Rebuttal</td> <td></td> </tr> <tr> <td>13 Testimony</td> <td>38</td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15</td> <td></td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </table>	3 Examination	Page	4		5 Direct by Mr. Meza	5	6 Direct by Mr. Culpepper	72	7		8 ---		9		10 Deposition Exhibit	Page	11 NO. 1 NC Supplemental Direct Testimony	36	12 NO. 2 Joint Petitioners NC Rebuttal		13 Testimony	38	14		15		16		17		18		19		20		21		22		23		24		25		<p style="text-align: right;">Page 5</p> <p>1 PROCEEDINGS</p> <p>2 * * * * *</p> <p>3 Whereupon,</p> <p>4 JERRY WILLIS,</p> <p>5 having been duly sworn, testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. MEZA:</p> <p>8 Q. Good morning, Mr. Willis.</p> <p>9 A. Good morning.</p> <p>10 Q. My name is Jim Meza, and I'm a lawyer</p> <p>11 representing BellSouth. And we're here for your</p> <p>12 deposition morning. Have you ever been deposed</p> <p>13 before?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 MR. CAMPEN: Excuse me, Mr. Meza, just</p> <p>17 a moment.</p> <p>18 MR. MEZA: Okay.</p> <p>19 MR. CAMPEN: Just get on the record</p> <p>20 that this deposition will be done with the same</p> <p>21 stipulations that have governed the BellSouth</p> <p>22 depositions earlier and we reserve the right to</p> <p>23 read and sign. Thank you.</p> <p>24 MR. MEZA: No problem.</p> <p>25 Q. I'm going to ask you a series of</p>
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BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-772, Sub 8
Docket No. P-913, Sub 5
Docket No. P-989, Sub 3
Docket No. P-824, Sub 6
Docket No. P-1202, Sub 4

COPY

In the Matter of)
)
Joint Petition NewSouth)
Communications Corp., et al. for)
Arbitration with BellSouth)
Telecommunications, Inc.)

Raleigh, North Carolina
Tuesday, December 14, 2004
Deposition of JERRY WILLIS,

a witness herein, called for examination by
counsel for the Joint Petitioners, in the
above-entitled action, pursuant to Notice, the
witness being duly sworn by Sarah K. Mills,
Court Reporter and Notary Public in and for the
State of North Carolina, taken at the Offices of
Parker Poe Adams & Bernstein, 150 Fayetteville
Street Mall, Suite 1400, Raleigh, North
Carolina, beginning at 9:10 a.m., on Tuesday,
December 14, 2004, such proceedings being taken
stenographically by Sarah K. Mills.

<p>Page 2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 On behalf of the Joint Petitioners</p> <p>4 Henry C. Campen, Jr.</p> <p>5 Parker Poe Adams & Bernstein, LLP</p> <p>6 1400 Wachovia Capitol Center</p> <p>7 Raleigh, NC 27602-0389</p> <p>8</p> <p>9 John J. Heitmann</p> <p>10 Garret R. Hargrave</p> <p>11 Kelley Drye & Warren</p> <p>12 1200 19th Street, NW</p> <p>13 Suite 500</p> <p>14 Washington, DC 20036</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>On behalf of BellSouth</p> <p>Jim Meza</p> <p>Robert A. Culpepper</p> <p>BellSouth Legal Department</p> <p>675 West Peachtree Street, NE</p> <p>Suite 4300</p> <p>Atlanta, GA 30375</p>	<p>Page 4</p> <p>1 STIPULATIONS</p> <p>2 Before testimony was taken, it was</p> <p>3 stipulated by and between counsel representing</p> <p>4 the respective parties as follows</p> <p>5</p> <p>6 1. That any defect in the notice of the</p> <p>7 taking of this deposition, either as to time or</p> <p>8 place, or otherwise as required by statute is</p> <p>9 expressly waived, and this deposition shall have</p> <p>10 the same effect as if formal notice in all</p> <p>11 respects as required by statute had been given</p> <p>12 and served upon the counsel in the manner</p> <p>13 prescribed by law</p> <p>14 2. That this deposition shall be taken for</p> <p>15 the purpose of discovery or for use as evidence</p> <p>16 in the above-entitled action, or for both</p> <p>17 purposes</p> <p>18</p> <p>19 3. That this deposition is deemed opened</p> <p>20 and all formalities and requirements with</p> <p>21 respect to the opening of the same, expressly</p> <p>22 including notice of the opening of this</p> <p>23 deposition, are hereby waived, and this</p> <p>24 deposition shall have the same effect as if all</p> <p>25 formalities in respect to the opening of the</p> <p>same had been complied with in detail</p> <p>4 That the undersigned, Sarah K. Mills, a</p> <p>Notary Public is duly qualified and constituted</p> <p>to take this deposition</p> <p>5 Objections to questions, except as to</p> <p>the form thereof, and motions to strike answers</p> <p>need not be made during the taking of the</p> <p>deposition, but may be reserved until any</p> <p>pretrial hearing held before any judge of any</p> <p>court of competent jurisdiction for the purpose</p> <p>of ruling thereon, or at any other hearing or</p> <p>trial of said case at which said deposition</p> <p>might be used, except that an objection as to</p> <p>the form of a question must be made at the time</p> <p>such a question is asked or objection is waived</p> <p>as to the form of the question</p> <p>6 That the North Carolina Rules of Civil</p> <p>Procedure shall control concerning the use of</p> <p>the deposition in court.</p>
<p>Page 3</p> <p>1 INDEX TO EXAMINATIONS & EXHIBITS</p> <p>2</p> <p>3 Examination Page</p> <p>4</p> <p>5 Direct by Mr. Meza 5</p> <p>6 Direct by Mr. Culpepper 72</p> <p>7</p> <p>8 ---</p> <p>9</p> <p>10 Deposition Exhibit Page</p> <p>11 NO. 1 NC Supplemental Direct Testimony 36</p> <p>12 NO. 2 Joint Petitioners NC Rebuttal</p> <p>13 Testimony 38</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 5</p> <p>1 PROCEEDINGS</p> <p>2 * * * * *</p> <p>3 Whereupon,</p> <p>4 JERRY WILLIS,</p> <p>5 having been duly sworn, testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. MEZA:</p> <p>8 Q. Good morning, Mr. Willis</p> <p>9 A. Good morning.</p> <p>10 Q. My name is Jim Meza, and I'm a lawyer</p> <p>11 representing BellSouth. And we're here for your</p> <p>12 deposition morning. Have you ever been deposed</p> <p>13 before?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 MR. CAMPEN: Excuse me, Mr. Meza, just</p> <p>17 a moment.</p> <p>18 MR. MEZA: Okay.</p> <p>19 MR. CAMPEN: Just get on the record</p> <p>20 that this deposition will be done with the same</p> <p>21 stipulations that have governed the BellSouth</p> <p>22 depositions earlier and we reserve the right to</p> <p>23 read and sign. Thank you.</p> <p>24 MR. MEZA: No problem.</p> <p>25 Q. I'm going to ask you a series of</p>

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4 (Pages 10 to 13)

<p style="text-align: right;">Page 14</p> <p>1 A. I'm trying to decide if that would 2 violate my nondisclosure I have with them. 3 Q Okay. Well, I don't want you to do 4 that. So let me try to craft some questions to 5 hopefully get the information I want without you 6 feeling like you need to violate any conditions. 7 That's not my intent of my questions. 8 A. Okay. 9 Q. Do you know how many companies that 10 you provide consulting services to other than 11 NuVox? 12 A. Yes. 13 Q How many? 14 A. One. 15 Q Is it in BellSouth's region? 16 A. It has a presence in BellSouth's 17 region. 18 Q. What types of duties do you have for 19 this other company? 20 A. Basically performing network cost 21 analysis with the goal of reducing the operating 22 cost of the company. 23 Q. How long have you been a consultant 24 for this other company? 25 A. Approximately, four months.</p>	<p style="text-align: right;">Page 16</p> <p>1 in this arbitration? 2 A. No. 3 Q. Do you report to anyone at NuVox? 4 A. Basically, Bo Russell or Hamilton 5 Russell. 6 Q. How often do you speak to Bo? 7 A. Generally, every time we have a 8 conference call or a meeting concerning the 9 agreement or the arbitration. Occasionally in 10 between. 11 Q. Now, you stated that you were a former 12 employee of NuVox; is that correct? 13 A. Yes. 14 Q. When did you leave NuVox? 15 A. In July of 2003. 16 Q. In your testimony, you state that you 17 were employed by NuVox until September 2003; is 18 that incorrect? 19 A. That is incorrect, yes. It was 20 July 31 of 2003. 21 Q. Why did you leave NuVox? 22 A. I've been in telecom for 37 years and 23 decided I wanted to do less telecom and more 24 living. 25 Q. What was your position with NuVox</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Did you -- do you help them prepare 2 testimony or prepare for arbitration with 3 another RBOC? 4 A. No, I do not. I have reviewed some 5 contracts with another RBOC. 6 Q For that other company? 7 A For that other company. 8 Q. Okay. Have you provided consulting 9 services at any other time for any company other 10 than NuVox or this additional company that 11 you've just referenced? 12 A. Since I've left -- 13 Q. Yes. 14 A. -- full employment at NuVox, no. 15 Q. What about before you left? 16 A. Yes. Actually, before I came to 17 NuVox. 18 Q. What type of consultant were you? 19 A. We were basically a engineering and 20 implementation company. We did a lot of work 21 with putting together records and implementing 22 OSS systems. 23 Q. How long ago was that? 24 A. Five, six years ago. 25 Q. Was it for a company that's currently</p>	<p style="text-align: right;">Page 17</p> <p>1 prior to leaving its employ? 2 A. I was executive director for network 3 cost and budgeting. 4 Q. So your statement in your testimony 5 that you were formerly senior director network 6 development is incorrect? 7 A. Well, actually, at the time the 8 executive director thing came out just prior to 9 me leaving actually. 10 Q Is that a promotion? 11 A. Not really. It was revamping of the 12 structure resulting from a previous merger we 13 did. 14 Q. And you're talking about -- you're 15 talking about NuVox? 16 A. NuVox. 17 Q. What merger was that? 18 A. With Gabriel Communications. 19 Q. When was that merger completed? 20 A. I don't remember. 21 Q. Was it immediately prior to your 22 departure from NuVox? 23 A. No, it was several months before. I 24 don't recall the date. 25 Q. Okay. What were your specific duties</p>

5 (Pages 14 to 17)

Page 18	Page 20
<p>1 either as senior director or as executive 2 director? 3 A. I was responsible for cost control 4 related to the network cost. 5 Q. What do you mean by cost control? 6 A. Looking at network costs, doing 7 analysis, determining if there was a more 8 efficient way to accomplish delivering the 9 service. Reviewing bills from the various 10 vendors at times to ensure that we were being 11 billed properly, that the billing rates matched 12 the contracts. 13 Q. Did you have any role in CNAM issues? 14 A. Related to cost or -- 15 Q. Just in general? 16 A. Not other than an occasional request 17 for help in troubleshooting something that dealt 18 with CNAM. 19 Q. So CNAM wasn't part of your overall 20 scope of duties? 21 A. Other than the cost of it, no. 22 Q. What about BellSouth's OSS, was that 23 part of your -- 24 A. No. 25 Q. How long were you employed at NuVox?</p>	<p>1 Q. What type of services did you provide 2 through this company TSGI? 3 A. That's when we provided mostly OSS 4 implementation. We also provided some 5 engineering services to some of our customers. 6 Q. When you use the phrase OSS 7 implementation, what exactly are you referring 8 to? 9 A. Mechanized systems for tracking the 10 network, placing orders, tracking network 11 assignments. 12 Q. And this is the CLEC's OSS versus the 13 ILEC's OSS? 14 A. Yes. 15 Q. Okay. Have you ever worked for an 16 RBOC? 17 A. No. 18 Q. What about an ILEC? 19 A. No. 20 Q. What about an independent company? 21 A. Yes. 22 Q. Which one? 23 A. I worked for ConTEL. 24 Q. Where are they? 25 A. They are no longer. They were</p>
Page 19	Page 21
<p>1 A. I started in May of 2000. 2 Q. As a senior director? 3 A. Yes 4 Q. Where were you before you went to 5 NuVox in 2000? 6 A. I had my own company for two years -- 7 three years. 8 Q. What was that company called? 9 A. TSGI. 10 Q. Is it still in existence today? 11 A. No 12 Q. When did it cease doing business? 13 A. I'm not sure. I think it would have 14 been late 2001 or 2002. 15 Q. And do you know why? 16 A. No. 17 Q. It's your company but you don't know 18 why it stopped operating? 19 A. I had two silent partners or two 20 investors, and when I decided to leave, I sold 21 my part of the company to them. 22 Q. Why did you sell your interest in your 23 company? 24 A. I was traveling constantly. I decided 25 I wanted to be home, occasionally at least.</p>	<p>1 acquired by GTE. 2 Q. What part of the country? 3 A. I worked in several parts of the 4 country with them. I worked with -- in 5 Virginia. I worked in North Carolina. I worked 6 in Tennessee. And I worked in Georgia. 7 Q. Have you ever provided testimony to 8 any state commission or regulatory proceeding 9 before, other than this testimony? 10 A. Yes. 11 Q. What state? 12 A. North Carolina, South Carolina, 13 Tennessee, Georgia, Florida. 14 Q. I'm going to show you what we'll mark 15 as -- 16 MR. MEZA: Off the record a second. 17 (DISCUSSION OFF THE RECORD.) 18 (DEPOSITION EXHIBIT NO. 1 MARKED.) 19 Q. Mr. Willis, I'm handing you what I've 20 marked as Exhibit 1, which I've given to your 21 counsel, and I represent to you this is the 22 October 29, 2004, filing of the Joint 23 Petitioners in their Supplemental Direct 24 Testimony, North Carolina. And I ask you to 25 turn to page 15. If you look on page 6 {sic} of</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 that page. You state that you've submitted 2 testimony only to the Public Service Commission 3 of South Carolina? 4 A. Yes. 5 Q. Is that statement in your testimony 6 incorrect? 7 A. It is. I think at the time I made 8 that, I was thinking of actual testimony before 9 the Commission rather than written versions of 10 testimony. 11 Q. So you have -- is it fair to say that 12 you've only testified live in the South Carolina 13 Public Service Commission? 14 A. Yes. 15 MR. CAMPEN: Mr. Meza, just for the 16 record, I think you referred to page 6 of page 17 15. You meant to say line 6. 18 MR. MEZA: Thank you for that 19 correction. 20 Q. How long ago was that testimony 21 provided? 22 A. I'm not sure. Either 2001 or 2002. 23 Q. What company did you submit testimony 24 on behalf of? 25 A. NuVox.</p>	<p style="text-align: right;">Page 24</p> <p>1 A. No. 2 Q. So would it be fair to say that this 3 is your first and only experience to date as a 4 witness for NuVox as a consultant? 5 MR. CAMPEN: Objection to the form 6 A. Yes. 7 Q. Who asked to you be a witness in this 8 proceeding? 9 A. Bo or Hamilton Russell. 10 Q. When were you asked to be a witness? 11 A. I don't remember the exact time. It 12 was while I was still in employ before I left 13 the company. 14 Q. Why did you select the two issues of 15 the many issues that we have in this arbitration 16 to opine about? 17 MR. CAMPEN: Objection. That gets 18 into privileged communications. 19 Q. I don't want you to disclose any 20 conversations you may have had with your 21 attorney, but to the extent you have not, and if 22 you know? 23 A. It was basically through the 24 conversations with Hamilton Russell. 25 Q. Okay. Did you draft your testimony?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. And do you remember the issue? 2 A. It related to collocation and rates. 3 Q. Was BellSouth involved in that 4 proceeding? 5 A. Yes. 6 Q. Do you remember the docket? 7 A. No, do not. 8 Q. Have you submitted testimony on behalf 9 of NuVox in any other proceeding as a consultant 10 other than this one? 11 A. Related to this or -- not to the North 12 Carolina, but, yes, I've submitted testimony for 13 other states. 14 Q. Yes, as it relates to the arbitration 15 proceeding between NuVox, NewSouth, KMC, 16 Xspedius, and BellSouth, have you submitted 17 testimony on behalf of NuVox as a consultant in 18 any other regulatory proceeding? 19 A. I have prepared written testimony in 20 other proceedings, yes. 21 Q. Have you submitted the testimony? 22 A. You mean personally? 23 Q. Personally. 24 A. In front of the commission? 25 Q. Yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 A. The testimony was actually put 2 together by the group. It was mostly drafted 3 with assistance and guidance from counsel. 4 Q. How did it work, the drafting of 5 testimony? 6 A. We would have a general discussion on 7 the issue, and generally counsel would put 8 something together and review, and we would edit 9 it and go back until we got it correct. 10 Q. Did you provide any revisions to the 11 testimony you received from counsel? 12 A. I don't know. There were so many 13 discussions. I don't know if I could say I 14 actually provided revisions. I provided 15 comments. 16 Q. Do you agree with everything that's 17 set forth in your testimony? 18 A. Yes. 19 Q. Is there any specific portion of your 20 testimony that is solely from you, other than 21 your background? 22 MR. CAMPEN: Objection to form. 23 A. That is solely from me, no. 24 Q. Do all the other CLECs in this 25 proceeding have the same position regarding this</p>

<p style="text-align: right;">Page 26</p> <p>1 issue? 2 A. To my knowledge, yes. 3 Q. Are you aware of any disagreement 4 between the CLECs regarding the positions that 5 you testify about? 6 A. No. 7 Q. Have you ever talked to Mr. Heitmann? 8 A. Yes. 9 Q. What about Ms. Joyce? 10 A. Yes. 11 Q. Ms. Hendrickson? 12 A. Yes. 13 Q. Have you ever met them? 14 A. Yes. 15 Q. When? 16 A. Well, I had breakfast with 17 John Heitmann. Ms. Hendrickson, I've met on 18 several occasions. I've never met Ms. Joyce, 19 although I've spoken with her on the phone. 20 Q. Have these meetings occurred after you 21 left NuVox employment? 22 A. Before and after, yes. 23 Q. Have you had any discussions with KMC 24 or Xspedius regarding your testimony? 25 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 Ms Hendrickson. 2 Q. Do you still have those documents? 3 A. Yes. 4 Q. Have you -- 5 A. Well, some of them. 6 Q. Would those documents include e-mails? 7 A. Yes. 8 Q. What did you do in preparation for 9 this deposition? 10 A. I read through my testimony and looked 11 through some other documentation that's referred 12 to in the testimony. We had some discussions 13 with Mr. Heitmann, with Henry. 14 Q. And when were those discussions? 15 A. We had some discussions yesterday. 16 There have been numerous discussions over the 17 phone -- phone calls. 18 Q. Did you review any documents? 19 A. Only the testimony. 20 Q. Have you ever read the TRO? 21 A. No. 22 Q. Do you know what I mean when I use the 23 term -- 24 A. Yes. 25 Q. -- TRO?</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. When? 2 A. With KMC's counsel last -- yesterday. 3 Q. What counsel was that? 4 A. Marva Johnson. 5 Q. Do you know if she's acting as a 6 lawyer in this proceeding or as a witness? 7 A. I don't know. 8 Q. Who else? 9 A. Mr. Falvey from Xspedius. That's been 10 some time ago. I don't know -- I couldn't say 11 the exact date. 12 Q. Do you have any notes from your 13 meetings from these -- excuse me, strike that. 14 Do you have any notes that you've kept 15 from your meetings as a consultant with either 16 your Washington, D.C. lawyers, Mr. Hamilton, or 17 with any other company? 18 A. With me or -- 19 Q. In your possession? 20 A. Yes. 21 Q. Have you received any documents from 22 KMC, Xspedius, NewSouth, or any other lawyers in 23 this proceeding relating to your testimony since 24 you tendered as a consultant? 25 A. Only from Mr. Heitmann and</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes. 2 Q. Well, let me make sure you know. It 3 has multiple meanings depending upon what 4 industry you're in. Are you familiar with the 5 FCC's Trade and Review Order issued in August of 6 2003? 7 A. I would not say that I am conversed in 8 it. I am familiar with what it is, yes. 9 Q. And when I use the phrase TRO, I mean, 10 that particular order. 11 A. Yes. 12 Q. Make sure we are clear on that, okay? 13 A. Yes, that is correct. 14 Q. And you have not read the TRO; is that 15 correct? 16 A. No. 17 Q. Have you read the DC Circuit's 18 decision in what's commonly known as the USTA II 19 issued in March 2004? 20 A. I have read parts of it. 21 Q. Do you remember which ones? 22 A. No. 23 Q. Do you know how long ago you read it? 24 A. No. 25 Q. Do you know if you read that decision</p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 30</p> <p>1 in preparation for drafting your testimony?</p> <p>2 A It would have been in relation to the</p> <p>3 testimony and to discussions that we would have</p> <p>4 had about the testimony and what the decisions</p> <p>5 said.</p> <p>6 Q Back up a second. Is there a vote</p> <p>7 that the CLECs take before there's an agreement</p> <p>8 as to whether to take a position or not?</p> <p>9 A No, I've never been aware of a vote.</p> <p>10 Q Okay. So you don't know if it's</p> <p>11 unanimous or a majority as to whether or not</p> <p>12 this is the course of action the CLECs will</p> <p>13 take?</p> <p>14 A I think it's unanimous. I haven't --</p> <p>15 I know of no dissenters.</p> <p>16 Q Have you read the FCC's Interim Rules</p> <p>17 Order?</p> <p>18 A Again, I've looked at parts of it.</p> <p>19 Q Do you remember which ones?</p> <p>20 A No.</p> <p>21 Q Do you know how long ago you read it?</p> <p>22 A No.</p> <p>23 Q Was it in relation to your drafting of</p> <p>24 testimony?</p> <p>25 A Yes, and reviewing the testimony.</p>	<p style="text-align: right;">Page 32</p> <p>1 their contention to always comply with the law?</p> <p>2 A Yes, as far as I know.</p> <p>3 Q Would you agree with me that the Joint</p> <p>4 Petitioners know what services they purchase</p> <p>5 from BellSouth?</p> <p>6 MR. CAMPEN: Objection to form.</p> <p>7 A I would think that the Joint</p> <p>8 Petitioners know what services they purchase,</p> <p>9 yes.</p> <p>10 Q Do you have any factual support for</p> <p>11 that belief?</p> <p>12 A Factual support and --</p> <p>13 Q And your belief?</p> <p>14 A I know that they have records of what</p> <p>15 they purchased and what services they provide.</p> <p>16 Q How do you know that?</p> <p>17 A I have in the past dealt with those</p> <p>18 records.</p> <p>19 Q Do you know why NuVox keeps those</p> <p>20 records?</p> <p>21 A To know what kind of services and</p> <p>22 business they provide to the customer and what</p> <p>23 they're paying for to the vendors</p> <p>24 Q Does NuVox keep these types of records</p> <p>25 for all services purchased by NuVox or just</p>
<p style="text-align: right;">Page 31</p> <p>1 Q Are you a lawyer?</p> <p>2 A No.</p> <p>3 Q What's your education background?</p> <p>4 A High school, come college.</p> <p>5 Q You've been in the telecom industry</p> <p>6 for 37 years?</p> <p>7 A Yes.</p> <p>8 Q In any of your positions, including</p> <p>9 those at NuVox or as a consultant, require you</p> <p>10 to interpret decisions from the FCC or report?</p> <p>11 A I was asked for my opinions, but not a</p> <p>12 legal interpretation. It was mostly connected</p> <p>13 with technical issues. Nothing related to the</p> <p>14 legal interpretation of a court order or an</p> <p>15 FCC order.</p> <p>16 Q Would you be the person with the most</p> <p>17 knowledge relating to NuVox's current business</p> <p>18 offerings or service offerings?</p> <p>19 A Probably not.</p> <p>20 Q Who would be?</p> <p>21 A I have no idea.</p> <p>22 Q Do you agree that the Joint</p> <p>23 Petitioners have to comply with the law?</p> <p>24 A Certainly.</p> <p>25 Q And is it -- at least for NuVox, is it</p>	<p style="text-align: right;">Page 33</p> <p>1 those that they purchase from BellSouth?</p> <p>2 A I don't know to what extent other</p> <p>3 vendors' records are incorporated.</p> <p>4 Q But you definitely know they have such</p> <p>5 records for BellSouth?</p> <p>6 A Yes.</p> <p>7 Q Do you know if NuVox reconciles their</p> <p>8 monthly billings from BellSouth with their own</p> <p>9 records for billing dispute purposes?</p> <p>10 A I don't know how they reconcile the</p> <p>11 billing records.</p> <p>12 Q Do you think there is some</p> <p>13 reconciliation performed?</p> <p>14 A Yes.</p> <p>15 Q Why do you believe that?</p> <p>16 A Because there's a group that does</p> <p>17 that.</p> <p>18 Q Who leads that group?</p> <p>19 A I'm not sure because of personnel</p> <p>20 changes since the merger started with NewSouth.</p> <p>21 Q Who was the person that you last knew</p> <p>22 of that headed that group?</p> <p>23 A Peggy Gimineti. Sorry, I cannot</p> <p>24 spell that.</p> <p>25 MR. CAMPEN: Excuse me, Mr. Meza, can</p>

<p style="text-align: right;">Page 34</p> <p>1 you tell Mr. Willis what issues these questions 2 relate to in his testimony? 3 MR. MEZA: No. I'm not. I'm -- 4 MR. CAMPEN: Do they relate to his 5 testimony? 6 MR. MEZA: Sure. Do you want to go 7 off the record outside the witness? 8 MR. CAMPEN: Yeah. 9 MR. MEZA: That would be fine, but I 10 don't want -- I'm not -- let's go off the 11 record. 12 (DISCUSSION OFF THE RECORD.) 13 MR. MEZA: We're back on the record. 14 Thanks to Mr. Camden's diligence, I've been 15 notified that what has been marked as Exhibit 1 16 is not the North Carolina Direct Testimony filed 17 on October 29, is actually the Tennessee 18 Supplemental Direct Testimony. And we would 19 replace what is a currently marked as Exhibit 1, 20 which is the North Carolina Supplemental Direct 21 on October 29 once it is here. 22 Q. Do you know how long it would take 23 for the Joint Petitioners to identify the 24 elements or services that would need to be 25 transitioned from an unbundled basis to a tower</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. MEZA: We're going to have to 2 wait. 3 MR. CAMPEN: Okay. 4 MR. MEZA: Sorry. I think the 5 testimony in Tennessee is the same, but -- 6 (BREAK.) 7 (DEPOSITION EXHIBIT NO. 1 REMARKED.) 8 MR. MEZA: We have just now replaced 9 Exhibit 1 with the North Carolina Supplemental 10 Direct Testimony in lieu of the Tennessee. I 11 believe we can proceed. 12 Q. Mr. Willis, is it your understanding 13 that under the Joint Petitioners proposal, the 14 Joint Petitioners will create their own list of 15 circuits that need to be transitioned to verify 16 against BellSouth's list of services or circuits 17 that need to be transitioned? 18 A. I'm not sure it's been decided who's 19 going to create the list, but each company would 20 create their own list. 21 Q. So regardless of whether -- who has to 22 initially identify the circuits or services that 23 need to be transitioned, each company will 24 prepare their own list? 25 A. Yes.</p>
<p style="text-align: right;">Page 35</p> <p>1 basis? 2 MR. CAMPEN: Objection to form. 3 A. No. 4 Q. You don't know the cost that the Joint 5 Petitioners would incur for performing that 6 identification? 7 MR. CAMPEN: Objection to form. 8 A. No. 9 Q. Do you know if the Joint Petitioners, 10 and specifically NuVox, have done any work 11 internally relating to the identification of 12 elements that they would need to transition from 13 an unbundled basis to another service platform? 14 A. No, I don't know. 15 MR. CAMPEN: Object to the form of the 16 question. 17 MR. MEZA: What's your objection? 18 MR. CAMPEN: He's testifying on behalf 19 of NuVox not on behalf of the plaintiffs. 20 Q. Has NuVox done a cost study or cost 21 analysis of the cost that would be involved? 22 A. I don't know. 23 Q. Not something that you were given or 24 looked at in preparation of your testimony? 25 A. No.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. And why is that? 2 A. Because one company doesn't have 3 access to the other company's records. 4 Q. Why would NuVox want to create their 5 own list if it's their position that BellSouth 6 needs to identify the circuits and services that 7 need to be transitioned? 8 A. That's what I was referring to in my 9 earlier answer when I said, to my knowledge, 10 it's not been decided who will create the 11 initial list. 12 Q. I refer you to page 51 of your direct. 13 MR. CAMPEN: And by that, Mr. Meza, 14 you mean Supplemental Direct; is that correct? 15 MR. MEZA: Yes, Mr. Campen, I'm sorry. 16 Thank you. 17 Q. Look on line 6 through 9. Notably, 18 Joint Petitioners' proposal creates a helpful 19 check and balance in that CLP verification of 20 BellSouth's request will either generate 21 conversion requests, disconnect requests, or 22 disputes about whether a particular arrangement 23 must be converted. Do you see that? 24 A. Yes. 25 Q. Is it your testimony that at least</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 NuVox is intending to create a list of services 2 or circuits that it believes needs to be 3 transitioned? 4 A. No, this part of the testimony, I 5 believe, refers to a list that BellSouth would 6 create that NuVox would verify. 7 Q. And how would NuVox verify? 8 A. By checking its records. 9 Q. How long would that take? 10 A. I have no idea. 11 Q. Who would know at NuVox? 12 A. I don't know. 13 Q. Look on page 50, lines 13 through 16. 14 A. Yes. 15 Q. Do you know what cost -- excuse me, 16 line 12. Do you know what costs would be 17 involved in identifying service arrangements? 18 A. No, other than labor costs. 19 Q. Was that what you were referring to 20 when you wrote or agreed to line 12? 21 A. That, I believe, would be the primary 22 costs, yes. 23 (DEPOSITION EXHIBIT NO. 2 MARKED.) 24 Q. Show what you I've marked as 25 Exhibit 2. This is the Joint Petitioners North</p>	<p style="text-align: right;">Page 40</p> <p>1 list but the Joint Petitioners believe should be 2 transitioned to nonUNEs? Would the Joint 3 Petitioners voluntarily identify those circuits 4 and services? 5 A. I would think so in complying with the 6 law, yes. 7 Q. Is that your -- are you stating 8 affirmingly that they would or that you think 9 they would? 10 A. That they would. 11 Q. Are the Joint Petitioners, or in this 12 case NuVox, are they only willing to convert 13 those services or circuits that BellSouth 14 identifies as needing to be transitioned to a 15 nonUNE platform? 16 A. NuVox is willing to convert any 17 circuits to comply with the order 18 Q. Regardless of who identifies them? 19 A. Certainly. 20 Q. Do you believe that the cost causer 21 should bear the cost in performing the act? 22 A. Yes. 23 Q. And would you agree with me that when 24 a carrier purchases services from BellSouth's 25 tariff, certain recurring and nonrecurring</p>
<p style="text-align: right;">Page 39</p> <p>1 Carolina Rebuttal Testimony. I ask that you 2 turn to page 50 of Exhibit 2, lines 13 through 3 16. You state that BellSouth is in a better 4 situation to identify which circuits it believes 5 need to be converted or terminated because it is 6 no longer willing to provide them pursuant to 7 Joint Petitioners under the new agreement. Do 8 you see that? 9 A. Yes 10 Q. Why do you believe that BellSouth is 11 in a better situation to identify the circuits 12 that need to be transitioned? 13 A. Because BellSouth has initiated the 14 action to remove certain services from TELRIC 15 pricing or UNE pricing, and they would be in a 16 better position to identify what those services 17 are. 18 Q. Do you believe that each party bears 19 some cost in complying with the law as it 20 relates to this agreement that we're entering 21 into? 22 A. Yes. 23 Q. Now, what happens if the Joint 24 Petitioners identify, list or -- identify 25 services or circuits that are not on BellSouth's</p>	<p style="text-align: right;">Page 41</p> <p>1 charges apply? 2 A. Yes. 3 Q. And conversely, would you agree with 4 me that when a CLEC disconnects a service from 5 BellSouth that certain disconnect charges would 6 apply? 7 MR. CAMPEN: Objection to form. 8 A. Yes, if a carrier is disconnecting a 9 circuit because the circuit is no longer needed, 10 then there are charges in the tariff that would 11 apply. 12 Q. Why are you limiting it to a circuit 13 that is no longer needed? 14 A. Because if a carrier is forced to 15 change the way a circuit is billed, I would see 16 no reason for nonrecurring charges that are 17 tariffed to apply. 18 Q. Is it your belief that there is no 19 disconnection of the UNE service when you 20 transition it to a tariff service? 21 A. Yes, it is in most cases. 22 Q. What do you base that belief on? 23 A. The physical circuit doesn't change. 24 The rate is the only thing that changes. 25 Q. Are you familiar with BellSouth's OSS</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 relating to the conversion of services from UNE 2 to tariff? 3 A. No. 4 Q. So your belief is not based upon 5 BellSouth's OSS, is it? 6 A. No. It's based on the real world. 7 Q. And what is your experience in the 8 real world as it relates to the conversion of 9 services from UNE to tariff? 10 A. While I was at NuVox, I participated 11 in the project to convert to EELs, and there's 12 no disconnects that are done. The physical 13 circuit didn't change. 14 Q. Is your interpretation of the real 15 world limited to NuVox? 16 A. I'm not sure I understand that 17 question. 18 Q. Well, you said that in the world real 19 you believe that no physical disconnection 20 occurs, correct? 21 A. Correct. 22 Q. And when I asked -- 23 A. Related -- related to changing the 24 rate a circuit is billed at. 25 Q. Then I asked you for the facts that</p>	<p style="text-align: right;">Page 44</p> <p>1 charge for termination of that service or 2 circuit? 3 MR. CAMPEN: Objection to form. 4 A. I can't answer that. I don't make 5 policy for NuVox 6 Q. Do you think such a charge would be 7 appropriate? 8 A. No. 9 Q. Even though there is an actual 10 disconnection of a circuit? 11 A. Yes. 12 Q. Why not? Why don't you believe that 13 charge is appropriate? 14 A. NuVox purchased the original circuit 15 under a different pricing plan, and NuVox is now 16 forced to go to another pricing plan that makes 17 that service unprofitable. 18 Q. Do you know if the state commissions 19 have established a rate -- a UNE rate for the 20 disconnection of an unbundled element? 21 A. No. 22 Q. You don't know? 23 A. No. 24 Q. If they have, would that change your 25 opinion?</p>
<p style="text-align: right;">Page 43</p> <p>1 support that belief, and you said in the real 2 world, correct? 3 A. Yes. 4 Q. And in further questioning, I asked 5 you where did you obtain this experience? You 6 said in relation to the conversion of the EELs 7 at NuVox. 8 A. Yes, none of the circuits were 9 disconnected 10 Q. So your interpretation of what 11 actually occurs in a conversion is limited to 12 your experience with NuVox converting something 13 to an EEL? 14 A. No. In other companies, we have -- I 15 have been involved in changing circuits or 16 changing billing rates. 17 Q. What companies? 18 A. Oh, gosh, InTEXT. 19 Q. Anybody else? 20 A. Could be. I can't remember. 21 Q. If NuVox decides not to transition an 22 element that was provided on an unbundled basis 23 to a tariff service or resale and it chooses 24 rather to disconnect the service or circuit, 25 would NuVox be willing to pay the disconnect</p>	<p style="text-align: right;">Page 45</p> <p>1 MR. CAMPEN: Objection to form. 2 A. I don't know. 3 Q. What is your understanding of 4 BellSouth's position? 5 A. Related to? 6 Q. Issue 23, transition -- 7 A. Transition conversion. My 8 understanding is that BellSouth wants the CLECs 9 to provide a list of circuits to be converted 10 and to place the orders for the conversion of 11 those circuits. And if the CLEC misses any, 12 BellSouth will convert them anyway and charge 13 the CLEC for its labor to identify those 14 circuits as well as charge all the tariff 15 nonrecurring fees associated with that activity. 16 Q. Is NuVox willing to identify the 17 circuits that it believes need to be 18 transitioned, yes or no? 19 A. I don't know. 20 Q. Why not? Why don't you know? 21 A. I'm not the person who makes that 22 policy decision. 23 Q. You consider your testimony to be the 24 testimony of a policy witness? 25 A. Of a policy witness?</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 46</p> <p>1 Q. Yes.</p> <p>2 A. Define policy witness.</p> <p>3 Q. What is your understanding of the term</p> <p>4 policy witness?</p> <p>5 A. I don't know what -- you're asking the</p> <p>6 question. I don't know --</p> <p>7 Q. Well, you said you didn't know because</p> <p>8 you're not a policy witness.</p> <p>9 A. No, I did not say I was not a policy</p> <p>10 witness. I said I do not make policy decisions</p> <p>11 for NuVox.</p> <p>12 Q. In your testimony, does NuVox state</p> <p>13 that it is willing to identify the circuits or</p> <p>14 services that need to be transitioned?</p> <p>15 A. NuVox states that it is willing --</p> <p>16 excuse me, willing to verify the list it's</p> <p>17 asking BellSouth to provide for conversion.</p> <p>18 Q. And you don't know the answer to</p> <p>19 whether NuVox would be willing to identify</p> <p>20 initially the circuits or services that need to</p> <p>21 be transitioned; is that correct?</p> <p>22 A. No, apparently not. In the testimony</p> <p>23 NuVox is asking that BellSouth be required to</p> <p>24 provide the initial list.</p> <p>25 Q. Is there any circumstances --</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Is it NuVox's position that they</p> <p>2 should -- whatever nonrecurring charges would</p> <p>3 apply in the transition should be provided free?</p> <p>4 A. In the testimony, I believe NuVox's</p> <p>5 position is that the burden of implementing the</p> <p>6 conversions, the compromise that the Joint</p> <p>7 Petitioners propose places the burden --</p> <p>8 financial burden on both parties.</p> <p>9 Q. You didn't answer my question,</p> <p>10 Mr. Willis.</p> <p>11 A. What was your question?</p> <p>12 Q. My question is will -- is it NuVox's</p> <p>13 position that all nonrecurring charges that are</p> <p>14 associated with converting a service or circuit</p> <p>15 from an unbundled basis to either resale or</p> <p>16 tariff basis should be performed for free?</p> <p>17 A. I don't know.</p> <p>18 Q. Why don't you know?</p> <p>19 A. I'm not the person who makes that</p> <p>20 decision at NuVox.</p> <p>21 Q. Who would make that decision?</p> <p>22 A. I don't know.</p> <p>23 Q. Is it fair to say that you are not</p> <p>24 able to answer any questions that don't come</p> <p>25 directly from your testimony?</p>
<p style="text-align: right;">Page 47</p> <p>1 circumstance upon which NuVox would be willing</p> <p>2 to initially identify the services or circuits</p> <p>3 that need to be transitioned?</p> <p>4 A. I don't know.</p> <p>5 Q. Who would know at NuVox?</p> <p>6 A. I don't know.</p> <p>7 Q. How did you get direction from NuVox</p> <p>8 in order to draft your testimony regarding the</p> <p>9 policies that you're asking the Commission to</p> <p>10 implement on Issue 23?</p> <p>11 A. The majority of it came through</p> <p>12 conversations with Hamilton Russell and</p> <p>13 John Heitmann.</p> <p>14 Q. Is it NuVox's position that no</p> <p>15 nonrecurring charges should apply when</p> <p>16 transitioning or disconnecting a circuit or</p> <p>17 service?</p> <p>18 A. NuVox's position is they are willing</p> <p>19 to negotiate those rates or that they should be</p> <p>20 set at TELRIC rates by the Commission.</p> <p>21 Q. Is that in your testimony anywhere,</p> <p>22 that willingness to pay nonrecurring charges?</p> <p>23 A. No, actually, I believe I misspoke. I</p> <p>24 don't believe -- in the testimony -- it's not</p> <p>25 specific to the nonrecurring charges.</p>	<p style="text-align: right;">Page 49</p> <p>1 A. I'm not able to answer any questions</p> <p>2 related to policies that NuVox might have that</p> <p>3 are not addressed in my testimony.</p> <p>4 Q. What happens under the Joint</p> <p>5 Petitioners' proposal if a -- let's say NuVox</p> <p>6 doesn't notify BellSouth of a dispute regarding</p> <p>7 a circuit or service that needs to be</p> <p>8 transitioned?</p> <p>9 A. In the testimony the Joint Petitioners</p> <p>10 state that Bell can convert those circuits.</p> <p>11 Q. In that instance would NuVox be</p> <p>12 willing to pay a nonrecurring charge associated</p> <p>13 with converting those circuits?</p> <p>14 A. I don't know.</p> <p>15 Q. With that proposal, is NuVox waiving</p> <p>16 any rights it may have against BellSouth for</p> <p>17 converting those circuits without providing</p> <p>18 notice to NuVox?</p> <p>19 A. I don't know.</p> <p>20 Q. What is the purpose of that provision,</p> <p>21 sir?</p> <p>22 A. To try to reach a compromise on this</p> <p>23 issue with BellSouth that works for both</p> <p>24 parties.</p> <p>25 Q. Do you know what the Joint Petitioners</p>

<p>Page 50</p> <p>1 could be disputing as it relates to a circuit or 2 service that needs to be transitioned? 3 A. No. Each company may have different 4 disputes. I don't know. 5 Q. What about NuVox? 6 A. It would depend on what the -- I 7 believe what the final order and rules are. 8 Q. Assuming that there's no disagreement 9 on that, what type of dispute can you envision 10 relating to a service or circuit that needs to 11 be transitioned that NuVox may raise? 12 MR. CAMPEN: Objection to the form of 13 the question. 14 A. I don't know. 15 Q. In your 37 years of telecom 16 experience, can you envision any situation where 17 a dispute may be warranted? 18 A. I don't know. I can't say what a -- 19 or speculate on what a dispute might be when I 20 don't know what the rules are. 21 Q. Do you know what the Interim Rules 22 Orders says regarding what elements would need 23 to be transitioned? 24 A. Not specifically off the top of my 25 head, no.</p>	<p>Page 52</p> <p>1 MR. CAMPEN There's a line reference? 2 MR. MEZA: Yes, sir, 7 to 10. 3 Q. Let me know when you're done reading 4 A. I'm through. 5 Q. Based upon reading that sentence, is 6 it your testimony today that the Joint 7 Petitioners would be willing to pay a 8 switch-as-is nonrecurring charge for the 9 transition of a service? 10 A. No. 11 Q. Do you know if the language proposed 12 by Joint Petitioners reflects or is identical to 13 the position asserted on page 52 line 7 through 14 10? 15 MR. CAMPEN: Could you restate that 16 question? 17 Q. Yes. Do you know if the language 18 proposed by the Joint Petitioners for this issue 19 reflects or is identical to the position 20 asserted on page 52, lines 7 through 10? 21 A. No. 22 Q. Do you believe they should be 23 consistent? 24 MR. CAMPEN: Objection to form. 25 A. I believe the Petitioners, based on</p>
<p>Page 51</p> <p>1 Q. Have you ever reviewed BellSouth's 2 proposed language? 3 A. Yes. 4 Q. When? 5 A. Some of it last night. Over the past 6 months. 7 Q. The language in the agreement, not the 8 testimony, that's what I'm asking you? 9 A. The language in? 10 Q. The Attachment 2, have you read that? 11 A. I think so. I've read so much, I'm 12 not sure. Do you have Attachment 2 and I can? 13 Q. Yeah. It's okay. 14 Do you know if the Joint Petitioners 15 are willing to pay a switch-as-is nonrecurring 16 charge when there's no physical retermination in 17 the circuit involved? 18 A. I don't know. 19 Q. Based upon your understanding of what 20 you said in your testimony, do you think they 21 are willing? 22 A. I don't think my testimony addresses 23 that. 24 Q. I refer you to page 52 of your direct 25 testimony, which is Exhibit 1.</p>	<p>Page 53</p> <p>1 any changes that occur, could change their 2 position. 3 Q. I'm asking a more global question Do 4 you believe that the language proposed by the 5 Joint Petitioners should mirror the testimony? 6 A. Yes. 7 Q. What's the other issue that you've 8 provided testimony on other than transition 9 developments? 10 A. Expedite charges and CNAM DIPS. 11 THE WITNESS: Could we take a short 12 break? 13 MR. MEZA: Sure. I'm sorry. 14 (BREAK.) 15 BY MR. MEZA: 16 Q. What is CNAM? 17 A. It's the database that contains 18 information on a subscriber with the calling 19 name and number. 20 Q. Do you know how it works? 21 A. Basically. 22 Q. What is your understanding? 23 A. When a call is originated and goes to 24 the terminating switch, if the subscriber it's 25 terminating to has CNAM as a service or Caller</p>

14 (Pages 50 to 53)

Page 54	Page 56
<p>1 ID as a service, the terminating switch dips the 2 originating party's database, or queries instead 3 of dips. 4 Q. Is it your understanding that every 5 originating call or carrier has its own CNAM 6 database? 7 A. No. 8 Q. Do you know if there are third-party 9 CNAM databases? 10 A. Yes, there are. 11 Q. Do you know how many there are? 12 A. No, I don't. 13 Q. Do you know where NuVox stores its 14 calling information? 15 A. No. 16 Q. What about NewSouth? 17 A. No. 18 Q. Do you know if they have their own 19 database? 20 A. No. 21 Q. Do you know if it's possible -- if a 22 NuVox customer calls a NewSouth customer that 23 there is a possibility that Caller ID 24 information may not show up? 25 MR. CAMPEN: Objection to the form of</p>	<p>1 Q. What about NewSouth? 2 A. No. 3 Q. If a BellSouth customer calls a NuVox 4 customer and NuVox doesn't have a contract with 5 the third party that retains or holds the 6 BellSouth information, what happens? 7 MR. CAMPEN. Objection to form. 8 A. I would assume there would be no 9 Caller ID displayed. 10 Q. What happens if a NuVox caller calls a 11 BellSouth customer and BellSouth doesn't have 12 any contract with the third-party vendor where 13 NuVox's information is stored? 14 A. Actually, my first -- my previous 15 answer was incorrect. 16 Q. Okay. 17 A. You do not have to have a direct 18 contract if your database provider can dip 19 another data base. 20 Q. What does that mean? 21 A. That a third-party database provider, 22 its customer asks for a query. The third-party 23 provider can go to another third-party provider 24 to get the information 25 Q. How do you know that?</p>
Page 55	Page 57
<p>1 the question. 2 A. I don't know. 3 Q. Well, let me give you a hypothetical. 4 Presume for me that NuVox and NewSouth do not 5 use the same third-party characters or 6 third-party databases for CNAM storage. Okay. 7 And presume also that NuVox and NewSouth don't 8 have contracts with all these third-party 9 carriers that each one subscribes to. You 10 understand? 11 A. Yes. 12 Q. Is it possible in that scenario for a 13 NewSouth caller, whose number resides in a 14 database that NuVox does not have a contract 15 with, is it possible for that NewSouth caller 16 that his information would not show up in 17 NuVox's receiving party's Caller ID? 18 MR. CAMPEN: Objection to the form of 19 the question. 20 A. Under the scenario you described, yes. 21 Q. Do you know if that's ever happened? 22 A. No. 23 Q. Do you know what companies NuVox has a 24 contract with regarding dipping? 25 A. No.</p>	<p>1 A. I've seen it happen. I've discussed 2 with third-party providers. 3 Q. Have you ever seen a contract, CNAM 4 dipping contract? 5 A. Yes. 6 Q. When? 7 A. I don't know. Several years ago 8 Q. Have you reviewed any CNAM contracts 9 with third parties in preparation of filing your 10 testimony? 11 A. No. 12 Q. Have you talked to any third-party 13 vendors before filing your testimony? 14 A. No. 15 Q. And you don't know whether or not 16 NuVox and NewSouth actually store their numbers 17 with a third party? 18 A. No. 19 Q. But it's your testimony that a 20 third-party vendor will query another 21 third-party vendor? 22 A. Yes. 23 Q. In every instance? 24 A. I don't know in every instance. 25 Q. Will they do that regardless of</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 whether or not they have a contract with the 2 third party that actually has the information? 3 A. I don't know. I don't know what the 4 arrangement is. 5 Q. In what context did you find this out, 6 this information? 7 A. At one time -- at one time NuVox had 8 an agreement similar to that. 9 Q. With what third party? 10 A. I can't remember which one it was now. 11 Q. Was there an extra charge imposed upon 12 NuVox for dipping another third-party's 13 database? 14 A. I don't recall. I don't remember. 15 Q. Is that contract still in place? 16 A. I don't know. 17 Q. Who would know at NuVox? 18 A. I don't know. 19 Q. Does NuVox store numbers with 20 BellSouth in BellSouth's database? 21 A. I don't know. 22 Q. Do you believe this issue in dispute 23 relates to BellSouth and NuVox's dipping each 24 other's database or NuVox requesting that 25 BellSouth be forced to dip a third-party's</p>	<p style="text-align: right;">Page 60</p> <p>1 A. The experience that we -- that in the 2 past, we have used one database provider who 3 would dip another database provider. 4 Q. Is NuVox willing to pay BellSouth its 5 actual cost in dipping a third-party's database? 6 A. No. 7 Q. Why not? 8 A. I'll have to look at the exact 9 testimony, but the position is that each party 10 should be responsible for its own costs of 11 dipping a database. 12 Q. Presume with me that you're right, 13 that there is a means in which you can avoid 14 entering into contracts with all third-party 15 vendors by having a single third party dip 16 another third-party's database. Okay. And also 17 presume that if there is going to be a second 18 dip, that there will be additional charges for 19 that second dip. Do you understand? 20 A. Yes. 21 Q. Would NuVox be willing to pay for 22 those additional charges associated with the 23 second dip? 24 A. Let me look at my testimony for a 25 moment. Can you point me to that in the</p>
<p style="text-align: right;">Page 59</p> <p>1 database? 2 A. I believe the issue relates to 3 providing services to the customer. 4 Q. Okay. The BellSouth caller calls 5 NuVox, all right, and the NuVox end user 6 information is in a third-party database that 7 BellSouth does not have a contract with. What 8 is your position? 9 MR. CAMPEN: Objection to form. 10 A. Would you restate that? 11 Q. A BellSouth caller end user calls a 12 NuVox end user and the NuVox end user's 13 information -- or the BellSouth end user's 14 information is in a database -- strike that. 15 If BellSouth doesn't have a contract 16 with every single third-party vendor that has a 17 CNAM database, is it NuVox's position that 18 BellSouth needs to enter into those contracts? 19 A. It's NuVox's position that BellSouth 20 should dip the CNAM database, whoever provides 21 it. It's not necessary -- from my understanding 22 of CNAM and SS7, it is not necessary to have a 23 contract with each third-party CNAM provider. 24 Q. And what is your understanding based 25 on?</p>	<p style="text-align: right;">Page 61</p> <p>1 testimony, that particular issue? 2 Q. I'm not referring to a specific page 3 in your testimony. I'm asking you based on your 4 understanding and your testimony what would 5 happen in that scenario? 6 A. Ask me the question again please? 7 Q. Sure. Couple presumptions. First one 8 is that you're right about having one third 9 party dip another third-party's database. And 10 presumption two is that if they're going to do 11 the second dip, that there will be an additional 12 charge posed upon BellSouth by the entity that 13 it actually has a contract with. And the 14 question is, in that instance when there's an 15 additional charge imposed by the actual party 16 doing the dipping, would NuVox be willing to pay 17 that additional charge? 18 MR. CAMPEN: Mr. Meza, you're 19 questioning witness with respect to the CNAM 20 issue, which is Issue Item No. 572-39. 21 MR. MEZA: Yes. 22 MR. CAMPEN: Beginning on page 82 of 23 his rebuttal testimony? 24 A. It's NuVox's position that BellSouth 25 should pay that.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q Why?</p> <p>2 A. The position is that each party should</p> <p>3 be responsible for the charges to dip for CNAM.</p> <p>4 If BellSouth is charging its customer for the</p> <p>5 feature of Caller ID, isn't it being paid to</p> <p>6 provide Caller ID to that customer?</p> <p>7 Q. You're asking me a question?</p> <p>8 A. Yes.</p> <p>9 Q. That's not how it works.</p> <p>10 A. Well, that's a statement then.</p> <p>11 Q. Let me ask you another hypothetical.</p> <p>12 NuVox operates outside of BellSouth region,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q Are those customers that reside</p> <p>16 outside of BellSouth's region in which BellSouth</p> <p>17 is not involved in the call, another CLEC and</p> <p>18 NuVox or another RBOC and NuVox. Is it your</p> <p>19 testimony today that in areas outside of</p> <p>20 BellSouth's region, every single call results in</p> <p>21 Caller ID information appearing?</p> <p>22 A. No, because all customers don't</p> <p>23 subscribe to Caller ID.</p> <p>24 Q. Assuming that they do --</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Is NuVox willing to do exactly what</p> <p>2 it's asking BellSouth to do?</p> <p>3 A. Yes, the parties have agreed to the</p> <p>4 language, I believe, in CNAM. They haven't</p> <p>5 agreed to the rates or who should pay, other</p> <p>6 than the Joint Petitioners' position is each</p> <p>7 party should pay for the dips they do.</p> <p>8 Q. Okay, I understand your position.</p> <p>9 You believe that there should be no instance</p> <p>10 when a call -- when your customer has Caller ID,</p> <p>11 there should be no instance when Caller ID</p> <p>12 information from the originating caller should</p> <p>13 not appear. Would that be fair?</p> <p>14 A. I think there's always an instance</p> <p>15 that Caller ID information may not appear.</p> <p>16 Q. Regardless of any technical issue,</p> <p>17 it's your position that if technically feasible,</p> <p>18 each party has an obligation to provide that</p> <p>19 Caller ID information?</p> <p>20 A. If the customer subscribes to it.</p> <p>21 Q. Okay. Do you have any knowledge</p> <p>22 whatsoever if NuVox is currently doing that</p> <p>23 today?</p> <p>24 A. No.</p> <p>25 Q. Do you have any understanding of</p>
<p style="text-align: right;">Page 63</p> <p>1 Q Do you agree with me that there are</p> <p>2 instances in which Caller ID information will</p> <p>3 not appear?</p> <p>4 A. Yes, I have phone calls at home that</p> <p>5 caller ID information does not appear.</p> <p>6 Q. And do you know --</p> <p>7 A I won't answer those calls.</p> <p>8 Q. Do you know if BellSouth -- strike</p> <p>9 that.</p> <p>10 Does NuVox purchase Caller ID</p> <p>11 information from BellSouth?</p> <p>12 A. I don't know.</p> <p>13 Q. If they don't, do you know why this is</p> <p>14 an issue?</p> <p>15 A. The issue is that if the customers --</p> <p>16 if a customer, anybody's customer subscribes to</p> <p>17 Caller ID, they should get caller ID. The issue</p> <p>18 with the parties is each one should dip to</p> <p>19 provide the Caller ID that their subscriber is</p> <p>20 paying them for.</p> <p>21 Q. Does NuVox do that for every customer</p> <p>22 that it has?</p> <p>23 A. I don't know.</p> <p>24 Q. Who would know?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 65</p> <p>1 whether or not NuVox has a contract with all</p> <p>2 third-party vendors or even BellSouth regarding</p> <p>3 CNAM?</p> <p>4 A. Currently, what NuVox has today, I</p> <p>5 don't know.</p> <p>6 Q. What about while you were employed</p> <p>7 with NuVox?</p> <p>8 A. While I was employed with NuVox, I was</p> <p>9 familiar with a third-party contract we had and</p> <p>10 that third party dipped another CNAM.</p> <p>11 Q. Let me see if I can break it down</p> <p>12 fairly simple. Assuming that there is no</p> <p>13 technical reason for this Caller ID</p> <p>14 information not to appear, is it NuVox's</p> <p>15 position that the originating party should</p> <p>16 provide the Caller ID information in every</p> <p>17 instance if the customer receiving the call</p> <p>18 subscribes to Caller ID?</p> <p>19 MR. CAMPEN: Object to the form of the</p> <p>20 question.</p> <p>21 A. The originating party only provides</p> <p>22 the information to a database. It doesn't</p> <p>23 provide the information to the receiving party.</p> <p>24 The receiving party's service provider provides</p> <p>25 that information to the receiving party.</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 Q. So in that instance when a BellSouth 2 customer calls a NuVox customer, what is 3 supposed to happen? 4 A. If the NuVox customer has Caller ID, 5 the Caller ID should appear. 6 Q. And who would be doing the dipping in 7 that instance? 8 A. NuVox. 9 Q. Is it your testimony today that every 10 time a BellSouth customer calls a NuVox customer 11 who has Caller ID, that NuVox provides the 12 Caller ID information to its own customer? 13 A. I don't know. 14 Q. Do you believe BellSouth has any 15 obligation whatsoever in that scenario that I 16 just provided to you regarding CNAM? 17 A. BellSouth has an obligation to provide 18 access to the database and the customer 19 information in the database. 20 Q. Well, you just told me that it's not 21 the originating party that has to do the 22 dipping, it's the receiving party. 23 A. No, but there has to be information -- 24 there has to be a database and information in 25 the database for the receiving party to dip, and</p>	<p style="text-align: right;">Page 68</p> <p>1 uses now as the database provider. 2 Q. Would you be surprised to learn that 3 BellSouth does have contracts with third parties 4 that hold NuVox's numbers? 5 A. No. 6 Q. If they do, would that alleviate your 7 concerns? 8 A. Because BellSouth has a contract with 9 a third-party provider, would that alleviate the 10 concern? 11 Q. Yeah. 12 A. No. 13 Q. Why not? 14 A. As I understand, BellSouth's position 15 is that they do not want to dip a third-party's 16 database and they want the Joint Petitioners to 17 pay for the dips they do to a third-party 18 database. 19 Q. Where do you get your understanding 20 that BellSouth will not dip a third-party 21 database? 22 A. I didn't say they wouldn't dip a 23 third-party database. I said my understanding 24 of their position in this arbitration is that 25 they do not want to, or if they do, they want</p>
<p style="text-align: right;">Page 67</p> <p>1 the originating party provides that database and 2 that information. 3 Q. Do you know if BellSouth does provide 4 that information? 5 A. As a fact, I don't know. I would 6 assume that BellSouth provides a CNAM database 7 through someone. 8 Q. Do you know if BellSouth has its own 9 database? 10 A. No, I don't know. 11 Q. Do you know if any of your clients 12 subscribe that database? 13 A. No, I don't. 14 Q. If they do, would that alleviate all 15 of your concerns? 16 A. If NuVox subscribed to the BellSouth 17 database, would that alleviate all the concerns? 18 Q. Yes. 19 A. No. The concern is that BellSouth 20 doesn't want to dip NuVox's database, not that 21 NuVox doesn't want to dip BellSouth's database. 22 Q. Are you aware of any company that 23 NuVox currently uses to hold its numbers that 24 BellSouth does not have a contract with? 25 A. No, I don't know what company NuVox</p>	<p style="text-align: right;">Page 69</p> <p>1 the Joint Petitioners to pay for the dips 2 Q. And what is that based on? 3 A. The testimony BellSouth has filed. 4 Q. What's going on today as far as CNAM 5 dipping? 6 A. I don't know. 7 Q. Do you believe that the Joint 8 Petitioners have lost customers and gone back to 9 BellSouth as a result of BellSouth not dipping a 10 third party? 11 A. I think it's possible that you could 12 lose customers, yes. 13 Q. Do you have any facts to support that 14 possibility? 15 A. No, other than the fact if I get a 16 call at home or on my cell phone that doesn't 17 have Caller ID, I won't answer it. 18 Q. Well, would that make you change 19 carriers? 20 A. If I was a business and a lot of my 21 business was done over the telephone, yes, 22 because people -- my customers or potential 23 customers aren't going to answer a call that 24 shows up as no information. 25 Q. Do you know if BellSouth treats its</p>

<p style="text-align: right;">Page 70</p> <p>1 customer that have Caller ID in the same manner 2 as NuVox's customers regarding the dipping of 3 third parties? 4 A I don't know how BellSouth treats its 5 customers. 6 Q. Do you think BellSouth has a 251 7 obligation to dip their party's databases? 8 A Yes. 9 Q. Why? 10 A. It's part of providing local service. 11 Q. Do you know if the USTA II decision 12 addressed this issue? 13 A. I'm not sure. 14 Q. Do you think that's a relevant 15 decision to review prior to making a statement 16 that BellSouth has a 251 obligation to provide 17 third-party dipping? 18 A. I don't know because I'm not 19 familiar -- that familiar with the decision. 20 Q. Have you been involved in any 21 policy-making decisions with NuVox? 22 MR. CAMPEN: Objection to form. 23 A. Over a specific period of time or -- 24 Q. As relates to this proceeding? 25 A. No.</p>	<p style="text-align: right;">Page 72</p> <p>1 EXAMINATION 2 BY MR. CULPEPPER: 3 Q. Good morning, Mr. Willis I'm Robert 4 Culpepper, and I'm a lawyer with BellSouth also 5 representing BellSouth in this arbitration 6 proceeding. 7 While you were discussing or answering 8 some questions about your background, I 9 understand that you graduated from high school? 10 A. Yes. 11 Q. What high school? 12 A. Marion High School in Marion, North 13 Carolina. 14 Q. And you mentioned, I believe, that you 15 attended some college? 16 A. Yes, over the years I've taken various 17 college courses. 18 Q. Can you tell me where you attended 19 college? 20 MR. CAMPEN: Let me object to this. 21 Let's go off the record for a moment. 22 (DISCUSSION OFF THE RECORD.) 23 Q. Let's turn to Issue 88, service 24 expedite or service data advancement And I 25 believe it's -- let's look at Exhibit 1, pages</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. So basically, you just state what 2 NuVox tells you its policy is? 3 MR. CAMPEN: Objection to form. 4 A. NuVox decides its policy. It may 5 decide -- it may make policy decisions based on 6 conversations that go on between me and largely 7 counsel, because counsel is the primary contact 8 I have. I don't know how their decision-making 9 process works. 10 Q. Have you been involved in any 11 negotiations with BellSouth? 12 A. Yes, while I was still at NuVox. 13 Q. Not as a consultant? 14 A. Not as a consultant, no. 15 MR. MEZA: We're going to do something 16 quite unique for a deposition and that is pass 17 you off to my partner here. He's going to ask 18 you about issues that I'm not dealing with in 19 the arbitration. 20 Henry, we've already reached agreement 21 with John and Stephanie about this. 22 MR. CAMPEN: My assumption is we'll be 23 doing this at the hearing as well? 24 MR. MEZA: Yes, thank you. 25 MR. CAMPEN: Thank you</p>	<p style="text-align: right;">Page 73</p> <p>1 94 and 95. Now, on lines 10 and 11, page 94, 2 and I believe this is your testimony or 3 testimony that you are sponsoring, correct? 4 A. Yes. Yes 5 Q. You state all aspects of UNE ordering 6 must be priced at TELRIC. Do you see that? 7 A. Yes. 8 Q. What does TELRIC stand for? 9 A. I can't remember exactly. Total 10 element -- it's a forward looking pricing of the 11 cost of the network element based on the forward 12 looking cost of providing that element. I can't 13 remember the exact acronym. 14 Q. Can you tell me what is your 15 understanding of what TELRIC pricing is? 16 A. I thought I just did. It's the 17 forward looking pricing. There's a cost 18 providing -- for providing a network element, 19 and it's the cost of that looking over the long 20 term based on the cost plus a reasonable profit 21 to the provider. 22 Q. In your prior experience, have you 23 been involved in coming up with any type of 24 TELRIC pricing? 25 A. I've not been involved in coming up</p>

19 (Pages 70 to 73)

<p style="text-align: right;">Page 74</p> <p>1 with TELRIC pricing, no</p> <p>2 Q. What is the basis of your position</p> <p>3 that a service expedite charge must be priced at</p> <p>4 TELRIC?</p> <p>5 A. The service expedite request is part</p> <p>6 of the ordering and provisioning of network</p> <p>7 elements.</p> <p>8 Q. Do you have any other basis for your</p> <p>9 position?</p> <p>10 A. Yes. I think -- just a moment.</p> <p>11 The provisioning of UNEs is covered in the</p> <p>12 251 section.</p> <p>13 Q. When you say 251, what are you</p> <p>14 referring to, Mr. Willis?</p> <p>15 A. Of the Act.</p> <p>16 Q. Of the Telecom Act?</p> <p>17 A. Uh-huh.</p> <p>18 Q. So it's your basis that Section 251</p> <p>19 addresses the TELRIC pricing of service expedite</p> <p>20 charges?</p> <p>21 A. It addresses all aspects of service</p> <p>22 provisioning.</p> <p>23 Q. Is there any particular part of</p> <p>24 Section 251 that you are relying on for your</p> <p>25 position?</p>	<p style="text-align: right;">Page 76</p> <p>1 what was stated in the testimony</p> <p>2 Q. Did you review any orders, any other</p> <p>3 documents to come up with your position?</p> <p>4 A. I don't remember exactly. I remember</p> <p>5 going back and looking at 2-17 and looking at</p> <p>6 some other documents that were related to</p> <p>7 provisioning.</p> <p>8 Q. What other documents?</p> <p>9 A. I don't remember now.</p> <p>10 Q. What types of documents?</p> <p>11 A. I don't remember if they were FCC or</p> <p>12 state documents.</p> <p>13 Q. Do you know how service expedite</p> <p>14 charges are addressed in NuVox's current</p> <p>15 interconnection agreement?</p> <p>16 A. I'm not absolutely sure, no</p> <p>17 Q. So you don't know?</p> <p>18 A. I'm not sure I can remember that far</p> <p>19 back accurately. I have an opinion of what</p> <p>20 their -- or a vague recollection of what they</p> <p>21 were, but I'm not sure.</p> <p>22 Q. What is your vague recollection of the</p> <p>23 charge?</p> <p>24 A. That it was \$200 a day for each day</p> <p>25 the order was advanced.</p>
<p style="text-align: right;">Page 75</p> <p>1 A. I can't remember the parts off the top</p> <p>2 of my head. I would have to look at the</p> <p>3 document.</p> <p>4 Q. Outside of Section 251, do you have</p> <p>5 any other authority -- when I say authority, I</p> <p>6 mean like a state or federal order or other</p> <p>7 statute for your position?</p> <p>8 A. Yeah. In the testimony, refer to</p> <p>9 Issue 2-17, I believe if you refer back to that</p> <p>10 it does relate back to an order.</p> <p>11 Q. Issue 2-17. Do you know what that</p> <p>12 issue is?</p> <p>13 A. Related to provisioning of UNEs</p> <p>14 Q. Did you sponsor testimony in</p> <p>15 connection with Issue 2-17?</p> <p>16 A. I can't remember if I was a sponsor on</p> <p>17 that or not.</p> <p>18 Q. Service expedite charges. Well,</p> <p>19 before we move on. Beyond the Joint</p> <p>20 Petitioners' testimony on Issue 2-17 and Section</p> <p>21 251 of the Act, do you have any other --</p> <p>22 (INTERRUPTION.)</p> <p>23 Q. Do you have any other authority that</p> <p>24 supports your position on Issue 88?</p> <p>25 A. Not off the top of my head other than</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. Did you -- in your experience at</p> <p>2 NuVox, did NuVox pay BellSouth service expedite</p> <p>3 charges?</p> <p>4 A. I'm sure they did.</p> <p>5 Q. Did they request service expedites,</p> <p>6 NuVox that is?</p> <p>7 A. Yes</p> <p>8 Q. How often?</p> <p>9 A. I don't know.</p> <p>10 Q. Lines 13 and 14 on the same page, page</p> <p>11 94 of the direct testimony. Lines 13, there's a</p> <p>12 statement, where they require such access on an</p> <p>13 expedited basis, which is often necessary in</p> <p>14 order to meet a customer's needs, CLPs, C-L-P-s,</p> <p>15 shall not be subject to inflated excessive fees.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. How often do your customers or NuVox's</p> <p>19 customers require access on an expedited basis?</p> <p>20 A. I don't know.</p> <p>21 Q. Does NuVox or any the Joint</p> <p>22 Petitioners, to your knowledge, charge its</p> <p>23 customers an expedite fee?</p> <p>24 MR. CAMPEN: Object to form.</p> <p>25 A. I don't know.</p>

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1 Q. If they do charge them, do you know
2 what the fee is?
3 A No
4 MR. CAMPEN: Objection.
5 Q. Let's go to page 95, lines 12 to 14.
6 Where Petitioners require expedited provisioning
7 that request remains part of the overall UNE
8 provisioning scheme. Do you see that testimony,
9 Mr. Willis?
10 A Yes
11 Q. Again, what is your basis or your
12 authority for that statement?
13 A. Again, that the provisioning of UNEs
14 is within the parameters of Section 251 and
15 expediting requests are part of provisioning.
16 Q. Are you aware of any state commission
17 order or federal order which specifically states
18 that service expedites should be priced at
19 TELRIC?
20 A. I do recall reviewing an order, and I
21 do not remember if it was federal or state,
22 dealing with provisioning of UNEs should be
23 priced at TELRIC rates.
24 Q. Do you recall whether that order
25 addressed service expedites?

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1 A. Not as an individual item, but
2 service -- an expedited order is part of the
3 provisioning process.
4 Q. To your knowledge, has any commission
5 found that service expedite charges are subject
6 to be priced at TELRIC?
7 A. I don't know.
8 Q. Let's go to your rebuttal testimony,
9 which I believe is pages 96 to 98, and it's in,
10 I think, in Exhibit 2. Page 97, lines 3 to 5
11 There's a statement in there that essentially --
12 I'm paraphrasing now -- that it's irrelevant
13 what BellSouth charges its retail customers with
14 respect to service expedite charges. Do you see
15 that testimony?
16 A. Yes, I see that.
17 Q. What's the basis -- what is your basis
18 for that statement?
19 A. Taken in context with where this came
20 from, NuVox is not a retail customer of
21 BellSouth, and comparing what BellSouth wants to
22 charge NuVox to what it wants to charge its
23 retail customers is apples and oranges.
24 Q. What do you mean when you say what
25 BellSouth wants to charge?

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1 A. That BellSouth wants to charge NuVox
2 the expedite rates and its FCC tariff
3 Q. And going on to page -- let's go to
4 page 98 of the rebuttal testimony, Mr. Willis
5 Lines 1 through 3. BellSouth should not be able
6 to set an artificially high service expedite
7 charge in order to keep its expedite ordering
8 value at an artificially low level. Do you see
9 that testimony?
10 A. Yes.
11 Q. All right. What facts do you have
12 that substantiate that statement?
13 A. This is in rebuttal to an assertion
14 made by the BellSouth witness that all or most
15 of the orders submitted by the CLEC would be
16 expedites if the price was, in their opinion,
17 too low. And that's paraphrasing as well.
18 Q. Understood. What facts do you have or
19 what have you reviewed to come to the
20 determination that BellSouth's rates are -- or
21 service expedite rates are artificially high?
22 A. If BellSouth wants to charge its
23 wholesale customer a retail rate, then that rate
24 is artificially high for that wholesale
25 customer.

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1 Q. Why is that?
2 A. Then he's not a whole -- it's not a
3 wholesale customer any more. If a wholesale
4 customer has to pay retail rates, he's a retail
5 customer.
6 Q. Is it your testimony that BellSouth
7 should treat its wholesale customers differently
8 than its retail customers?
9 A. Yes.
10 Q. And, again, why?
11 A. As far as pricing.
12 Q. Pricing for?
13 A. The services that the wholesale
14 customer buys.
15 Q. Have you been involved in any of the
16 negotiations that have been going on between
17 BellSouth and Joint Petitioners on this issue?
18 MR. MEZA: It's been asked.
19 Q. Have you, as to this issue?
20 A. No.
21 Q. Let me see if I understand your
22 testimony. Is it your position that service
23 expedites should be priced at TELRIC because it
24 is part of the overall UNE ordering process?
25 A. Yes.

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1 Q What is the purpose of the UNE
2 intervals that have been established by this
3 commission here in North Carolina?
4 A. To set a standard interval for
5 providing services.
6 Q. To your knowledge, has this commission
7 established expedite intervals?
8 A. I don't know.
9 Q. Have you looked into that matter?
10 A If the Commission has established
11 expedite intervals?
12 Q. Uh-huh.
13 A By the definition of expedite, I don't
14 know how there would be an interval associated
15 with an expedite.
16 MR. CULPEPPER: Thank you, Mr. Willis.
17 I have no further questions.
18 THE WITNESS: You're welcome.
19 (Signature reserved.)
20 (The deposition concluded at 11:25 a.m.)
21
22
23
24
25

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1 SIGNATURE
2 I, JERRY WILLIS, do hereby state under oath that
3 I have read the above and foregoing deposition
4 in its entirety and that the same is a full,
5 true and correct transcript of my testimony
6
7 Signature is subject to corrections on attached
8 errata sheet, if any
9
10
11 JERRY WILLIS
12
13 State of _____
14 County of _____
15
16 Sworn to and subscribed before me this
17 _____ day of _____, 2005
18
19 Notary Public
20
21 My commission expires _____
22
23
24
25

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1 ERRATA SHEET
2
3 Case name. In the Matter of
4 Joint Petition NewSouth
5 Communications Corp., et al for
6 Arbitration with BellSouth
7 Telecommunications, Inc
8
9 Deponent. JERRY WILLIS
10 Date December 14, 2004
11
12 PAGE LINE READS SHOULD READ
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____

Page 85

1 CERTIFICATE
2 State of North Carolina
3 County of Wake
4
5 I, Sarah K Mills, a notary public in and for
6 the State of North Carolina, do hereby certify
7 that there came before me on the 14th day of
8 December, 2004, the person hereinbefore named,
9 who was by me duly sworn to testify to the truth
10 and nothing but the truth of his knowledge
11 concerning the matters in controversy in this
12 cause, that the witness was thereupon examined
13 under oath, the examination reduced to
14 typewriting by myself, and the deposition is a
15 true and accurate transcription of the testimony
16 given by the witness
17 I further certify that I am not counsel for, nor
18 in the employment of any of the parties to this
19 action, that I am not related by blood or
20 marriage to any of the parties, nor am I
21 interested, either directly or indirectly, in
22 the results of this action
23
24 In witness whereof, I have hereto set my hand
25 and affixed my official notarial seal, this the
26 27th day of December, 2004
27
28 Sarah K Mills
29 Notary Public
30 My commission expires 11/16/08
31
32
33
34
35

22 (Pages 82 to 85)

<p>A</p> <p>able 10 14 48.24 49 1 80 5</p> <p>above-entitled 1:15 4 9</p> <p>absolutely 6 19 76 16</p> <p>access 37 3 66 18 77 12 77 19</p> <p>accommodate 6 5</p> <p>accomplish 18 8</p> <p>accurate 85 8</p> <p>accurately 6 3 76 19</p> <p>ACNAs 12 22</p> <p>acquired 21.1</p> <p>acronym 73.13</p> <p>act 40 21 74 15,16 75.21</p> <p>acting 27 5</p> <p>action 1 15 4.9 30 12 39 14 85.11,12</p> <p>activities 9:22 13:6</p> <p>activity 45:15</p> <p>actual 22 8 44 9 60 5 61:15</p> <p>Adams 1 19 2 4</p> <p>addition 13 7</p> <p>additional 15 10 60 18 60 22 61 11,15,17</p> <p>addressed 49 3 70.12 76.14 78 25</p> <p>addresses 51 22 74 19 74.21</p> <p>advanced 76.25</p> <p>advancement 72 24</p> <p>affirmingly 40 8</p> <p>affixed 85 14</p> <p>ago 15 23,24 22 20 27 10 29 23 30.21 57 7</p> <p>agree 25 16 31 22 32 3 40 23 41 3 63 1</p> <p>agreed 38 20 64 3,5</p> <p>agreement 9 19 16 9 30 7 39 7,20 51.7 58 8 71 20 76 15</p> <p>al 1 7 83.3</p> <p>alleviate 67 14,17 68:6 68.9</p> <p>allow 9 10</p> <p>analysis 14.21 18 7 35.21</p> <p>answer 7 25 8.3 9 9 37-9 44 4 46 18 48-9 48.24 49 1 56 15 63 7 69 17,23</p> <p>answered 12 21</p>	<p>answering 72 7</p> <p>answers 4:17</p> <p>anticipate 6.7</p> <p>Anybody 43:19</p> <p>anybody's 63:16</p> <p>anyway 45 12</p> <p>apparently 46:22</p> <p>appear 63:3,5 64 13,15 65.14 66 5</p> <p>APPEARANCES 2 1</p> <p>appearing 62.21</p> <p>apples 79:23</p> <p>apply 41 1,6,11,17 47:15 48 3</p> <p>appreciate 6.1</p> <p>appropriate 44 7,13</p> <p>Approximately 14.25</p> <p>April 10.21</p> <p>arbitration 1:8 12 11 12:17 13 8 15.2 16:1 16 9 23.14 24:15 68.24 71.19 72.5 83.4</p> <p>areas 62.19</p> <p>arrangement 37.22 58:4</p> <p>arrangements 38:17</p> <p>artificially 80:6,8,21,24</p> <p>asked 4.22 24 7,10 31:11 42.22,25 43 4 81.18</p> <p>asking 11:4,6,10 46:5 46:17,23 47 9 51 8 53.3 61 3 62 7 64 2</p> <p>asks 56.22</p> <p>aspects 73 5 74 21</p> <p>asserted 52.13,20</p> <p>assertion 80:13</p> <p>assignments 20.11</p> <p>assistance 25 3</p> <p>associated 45:15 48 14 49.12 60.22 82 14</p> <p>assume 56 8 67 6</p> <p>Assuming 50 8 62.24 65:12</p> <p>assumption 71.22</p> <p>Atlanta 2.15</p> <p>attached 84:4</p> <p>Attachment 51:10,12</p> <p>attended 72 15,18</p> <p>attorney 24 21</p> <p>August 29.5</p> <p>authority 75:5,5,23 78:12</p> <p>avoid 60.13</p>	<p>aware 26.3 30:9 67 22 78:16</p> <p>a.m 1 21 82.20</p> <p>B</p> <p>back 25:9 30.6 34 13 69:8 75 9,10 76:5,19</p> <p>background 25:21 31.3 72:8</p> <p>balance 37 19</p> <p>base 41.22 56.19</p> <p>based 6:6 42 4,6 51.19 52 5,25 59.24 61:3 69.2 71.5 73:11,20</p> <p>basically 14:20 15:19 16 4 24.23 53.21 71 1</p> <p>basis 11:1 12:5 34 25 35.1,13 43.22 48:15 48 16 74 2,8,18 77 13,19 78:11 79 17 79:17</p> <p>bear 40.21</p> <p>bears 39:18</p> <p>beginning 1:21 61.22</p> <p>behalf 2:3,11 6:23,25 7 3,4,7 22 24 23:8,17 35 18,19</p> <p>belief 32:11,13 41 18 41 22 42 4 43.1</p> <p>believe 33:15 36:11 38 5,21 39 10,18 40 1,20 42 19 44 12 47.23,24 48 4 50:7 52 22,25 53:4 58 22 59 2 64 4,9 66 14 69 7 72 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BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-772, Sub 8
Docket No. P-913, Sub 5
Docket No. P-989, Sub 3
Docket No. P-824, Sub 6
Docket No. P-1202, Sub 4

COPY

In the Matter of)
)
Joint Petition NewSouth)
Communications Corp., et al. for)
Arbitration with BellSouth)
Telecommunications, Inc.)

Raleigh, North Carolina
Tuesday, December 14, 2004
Deposition of JOHN FURY,

a witness herein, called for examination by
counsel for the Joint Petitioners, in the
above-entitled action, pursuant to Notice, the
witness being duly sworn by Sarah K. Mills,
Court Reporter and Notary Public in and for the
State of North Carolina, taken at the Offices of
Parker Poe Adams & Bernstein, 150 Fayetteville
Street Mall, Suite 1400, Raleigh, North
Carolina, beginning at 11:35 a.m., on Tuesday,
December 14, 2004, such proceedings being taken
stenographically by Sarah K. Mills.

		Page 2
1	APPEARANCES OF COUNSEL	
2		
3	On behalf of the Joint Petitioners	
4	Henry C. Campen, Jr	
5	Parker Poe Adams & Bernstein, LLP	
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16	On behalf of BellSouth	
17		
18	Jim Meza	
19	Robert A. Culpepper	
20	BellSouth Legal Department	
21	675 West Peachtree Street, NE	
22	Suite 4300	
23	Atlanta, GA 30375	
24		
25		

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1	STIPULATIONS	
2	Before testimony was taken, it was	
3	stipulated by and between counsel representing	
4	the respective parties as follows:	
5		
6	1 That any defect in the notice of the	
7	taking of this deposition, either as to time or	
8	place, or otherwise as required by statute is	
9	expressly waived, and this deposition shall have	
10	the same effect as if formal notice in all	
11	respects as required by statute had been given	
12	and served upon the counsel in the manner	
13	prescribed by law.	
14	2 That this deposition shall be taken for	
15	the purpose of discovery or for use as evidence	
16	in the above-entitled action, or for both	
17	purposes.	
18		
19	3 That this deposition is deemed opened	
20	and all formalities and requirements with	
21	respect to the opening of the same, expressly	
22	including notice of the opening of this	
23	deposition, are hereby waived, and this	
24	deposition shall have the same effect as if all	
25	formalities in respect to the opening of the	
	same had been complied with in detail.	
	4 That the undersigned, Sarah K. Mills, a	
	Notary Public is duly qualified and constituted	
	to take this deposition.	
	5 Objections to questions, except as to	
	the form thereof, and motions to strike answers	
	need not be made during the taking of the	
	deposition, but may be reserved until any	
	pretrial hearing held before any judge of any	
	court of competent jurisdiction for the purpose	
	of ruling thereon, or at any other hearing or	
	trial of said case at which said deposition	
	might be used, except that an objection as to	
	the form of a question must be made at the time	
	such a question is asked or objection is waived	
	as to the form of the question.	
	6 That the North Carolina Rules of Civil	
	Procedure shall control concerning the use of	
	the deposition in court.	

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1	PROCEEDINGS	
2	* * * * *	
3	Whereupon,	
4	JOHN FURY,	
5	having been duly sworn, testified as follows:	
6	EXAMINATION	
7	BY MR. MEZA:	
8	Q. Good morning, Mr. Fury.	
9	A. Good morning.	
10	Q. My name is Jim Meza and I'm a lawyer	
11	representing BellSouth. I'm here to ask you	
12	some deposition questions relating to testimony	
13	that you filed in the arbitration proceeding	
14	pending here in North Carolina as well as other	
15	states. Have you ever been deposed before?	
16	A. No.	
17	Q. The process is quite simple. I'll be	
18	asking you questions and asking for your	
19	response. I do request that your response be	
20	made verbally rather than shaking of heads, like	
21	you just did --	
22	A. Yes.	
23	Q. -- so that the court reporter can	
24	accurately reflect your responses to my	
25	questions. If at any time you need a break, let	

<p style="text-align: right;">Page 6</p> <p>1 me know, I'll be more than happy to accommodate 2 you. And I ask that you allow me to finish my 3 question before answering, and I'll give you the 4 same respect in allowing you to finish your 5 answer before asking you another question. Okay? 6 A. Agreed. 7 Q. Mr. Fury, who do you currently work 8 for? 9 A. I am currently employed by NuVox 10 Communications. 11 Q. Are you here today speaking on behalf 12 of both NuVox and NewSouth? 13 A. Yes. 14 Q. To your best of your knowledge, is 15 NewSouth still an operating entity? 16 A. Yes. 17 Q. Do you have authority to bind NewSouth 18 with your comments today? 19 A. Yes. 20 Q. Do you understand that you have been 21 designated as the person at NuVox and NewSouth 22 that has the most knowledge about the issues 23 that you've provided testimony on? 24 A. Yes. 25 Q. Is that an accurate statement?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Would it be fair to say that you don't 2 consider yourself a policy witness but that 3 you're providing testimony relating to NuVox and 4 NewSouth's policies in this proceeding? 5 MR. CAMPEN: Objection to form. 6 Q. You can answer. 7 A. I think that's probably a -- I guess 8 that's a fair characterization. I have 9 technical background to lend to the policy 10 questions or to bring to bear on policy 11 questions. 12 Q. What are your current responsibilities 13 with NuVox? 14 A. I'm the carrier relations manager. 15 Q. What does that mean? 16 A. That means I have responsibility for 17 kind of managing the relationship between our 18 production areas and BellSouth and also ensuring 19 that the terms of our agreements are carried out 20 and that our folks are knowledgeable about how 21 those things are -- how it affects their jobs 22 and how they conduct their business. 23 Q. Would you provide me some specific 24 examples of activity that you perform in your 25 position?</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Yes 2 Q. Do you consider yourself to be a 3 policy witness? 4 A. No, I wouldn't. I'm -- I'm 5 probably -- I would characterize it as more of 6 a -- I kind of have a broad experience -- 7 technical experience of just a general 8 communications background in engineering and in 9 network design and planning, those types of 10 areas, so that's where a majority of my 11 expertise lies. 12 Q. Is it your testimony today that none 13 of the testimony that you filed prefiled 14 testimony on relates to a policy position? 15 A. I would say that that's not the case. 16 Q. So you -- 17 A. I think that they are -- I think that 18 they are -- there are policy questions in that 19 for the last two years, as you know, I've been 20 involved in these negotiations and have 21 developed a knowledge of the policy and have 22 been involved in, you know, regulatory aspects 23 working for my company, so I'm comfortable that 24 I have brought that or added that to my skills 25 as well, so.</p>	<p style="text-align: right;">Page 9</p> <p>1 A. Yeah. From time to time, I'm involved 2 in issues related to OSSs. I go and I'm a 3 regular participant in the change control 4 process meetings. I go to various industry 5 groups. I represent my company with our -- both 6 our account -- you know, with our account 7 management folks, with the CLEC CARE Teams. You 8 know, if we have ordering issues or if we have 9 maintenance and repair issues, I bring those to 10 those teams and ask them questions and clarify 11 what the policies and guides say, things like 12 that. 13 Q. Are you the main contact person for 14 your company's relationship with BellSouth? 15 A. I don't think I'm listed as the 16 contact as far as the -- I'm not the regulatory 17 contact. I think Jake and Bo are the regulatory 18 contacts, or they're the ones that are listed in 19 the agreement. I think I recently added my name 20 or requested that Jim Tamplin add me to the, I 21 guess, list of notified parties or whatever. 22 Q. Prior to your employment with NuVox, 23 you were employed with NewSouth; is that right? 24 A. Those two things run concurrently. 25 Q. Since when?</p>

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1 A. I'm not sure of that date.
2 Q. Was it recent?
3 A. Fairly recent, yeah.
4 Q. When you filed your petition for
5 arbitration, were the companies one at that
6 point or were they still operating as separate
7 entities?
8 A. They were operating as separate
9 entities at that point, and I believe it would
10 be correct to say that they were operating as --
11 they were operating as separate entities at that
12 point, yes.
13 Q. What about today?
14 A. They operate as -- they operate as
15 separate entities but under one holding.
16 Q. Holding company?
17 A. Correct. Well, let me -- can I
18 clarify that?
19 Q. Sure. That's another rule. If at any
20 point in time you want to change your answer,
21 feel free.
22 A. Sure. I would say that the employees
23 of NuVox and NewSouth are one and the same; in
24 other words, a provisioner, a NuVox provisioner
25 is a NewSouth provisioner. A NuVox provisioner

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1 would place orders under the ACNAs, OCNs,
2 et cetera, of NuVox and of NewSouth.
3 Q. So for the purposes of this
4 arbitration, although there may still be
5 distinct corporate entities, we should treat the
6 two companies as a single entity; is that right?
7 A. I would say that's correct.
8 Q. Does your carrier relations management
9 position include mergers and acquisitions
10 discussions with BellSouth?
11 A. I don't think it's -- as a -- it's one
12 of those other duties as required type things,
13 you know, in a kind of a project role in order
14 to, you know, coalesce our responses of
15 different departments, I take a project
16 management role in that.
17 Q. Have you had any discussion with
18 BellSouth regarding a merger between NewSouth
19 and NuVox and how such a merger would transpire?
20 A. I've had cursory discussions, nothing
21 in depth.
22 Q. Do you know when those conversations
23 took place?
24 A. I would say within the last month or
25 two.

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1 Q. And do you know who at BellSouth you
2 spoke with?
3 A. Let's see, Terry Douglas and -- who's
4 Terry's boss? I can't recall her name at this
5 time, but primarily Terry Douglas.
6 Q. And do you know what the nature of
7 these communications were?
8 A. Yes. I think that my main -- the main
9 thrust of my discussions with her regard pricing
10 for merger and acquisition, migrations, and also
11 some discussion over their formulation of a
12 guide for that process.
13 Q. Have you filed testimony in this
14 proceeding relating to the mergers and
15 acquisition issues?
16 A. I have not.
17 Q. Do you know why not?
18 A. No.
19 Q. Are you the person at NewSouth --
20 excuse me, NuVox, or both of them that has the
21 most knowledge regarding communications with
22 BellSouth regarding the MNA process?
23 A. I'm probably one of a number of people
24 that are involved in it. I don't know that I
25 would necessarily characterize my role as being

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1 primary or more -- of any more value than a
2 number of other folks that are currently
3 involved in the process.
4 Q. Would you consider Mr. Russell to be a
5 person involved in the process?
6 A. Yes.
7 Q. Is it true that all of the CLECs in
8 this proceeding have a unified position on the
9 issues that you testify about?
10 A. Yes, I would say that's true.
11 Q. Do you know if there's been a
12 disagreement among the CLECs relating to the
13 issues that you testify about?
14 A. I know there's been disagreements
15 about a number of things. I'm sure that over
16 time and as a part of the process, that we've
17 all, you know, worked through whatever -- you
18 know, whatever the positions are and arrived at
19 the same position.
20 Q. How would you work out those
21 disagreements? Is there a voting process or --
22 A. I wouldn't say a voting process
23 per se. I think there's -- you know, it's a
24 collaborative kind of iterative process where we
25 exchange communications and discuss things among

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1 the Petitioners, and that we discuss those
2 things with our counsel, and all kind of
3 ultimately arrive at the same position.
4 Q. Has there ever been a situation, at
5 least for the issues that you're familiar, where
6 a position was taken by the CLECs that was less
7 than unanimous?
8 A. I can't say that. I wouldn't say
9 that.
10 Q. You're unsure?
11 A. I wouldn't say that.
12 Q. I'm not --
13 A. No.
14 Q. So every decision as it relates to
15 your issues has been unanimous --
16 A. Yes.
17 Q. -- as far as what position to take?
18 A. Yes.
19 Q. Would it be fair to say that some
20 companies feel stronger about some issues and
21 other companies feel stronger about other
22 issues?
23 MR. CAMPEN: I'm going to object to
24 the question because I think we're getting into
25 communications among the parties. We are

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1 definitely talking about communications among
2 the parties regarding this litigation. I think
3 we had the same discussion last week about those
4 conversations being product privilege under the
5 direction of counsel to develop their positions
6 for the arbitrations.
7 MR. MEZA: You're stating that -- let
8 me make sure I understand your objection. Is it
9 your opinion that prioritizing certain issues to
10 fit a particular company need constitutes work
11 product?
12 MR. CAMPEN: To fit a particular
13 company need?
14 MR. MEZA: I mean, as a business,
15 these companies probably have, and I'm entitled
16 to know, what of the 40 issues, which ones do
17 they feel more strongly about? That is not a
18 litigation issue, communications issue. It's a
19 business decision.
20 MR. CAMPEN: I understand that.
21 MR. MEZA: That was the direction I
22 was going.
23 MR. CAMPEN: Okay. Let's go ahead and
24 proceed.
25 A. Can you ask that again?

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1 Q. Sure. I'll just skip the preparatory
2 question --
3 A. Right.
4 Q. -- that came and results in the
5 objection to ask you the real question
6 A. Sure.
7 Q. What are the issues that you know that
8 NuVox feels the most strongly about that are
9 left in this arbitration proceeding?
10 A. I don't believe that I can fairly give
11 you that summary.
12 Q. Who would?
13 A. I believe that our counsel would be
14 the best one to give you that.
15 Q. What about Mr. Russell?
16 A. I would leave it to counsel to give
17 you that.
18 Q. What counsel are you referring to?
19 A. I would say either local counsel or
20 Mr. Heitmann.
21 Q. Just to make sure I understand, your
22 outside counsel has the knowledge as to the
23 issues that NewSouth and NuVox consider to be
24 the most important for them for business reasons
25 in this arbitration?

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1 A. I don't think I would characterize it
2 that way. I believe that our outside counsel is
3 knowledgeable about our business issues and
4 knows the issues and what we -- our
5 prioritization of those issues among the
6 companies was formed by a collaboration.
7 Q. Okay. Well, I'm not asking --
8 A. I think we all -- I think we all
9 have -- you know, I think we all have -- you
10 know, we all have positions that we've arrived
11 at together that counsel -- I mean, working with
12 counsel has determined we are -- that we care
13 about all of them. I can't -- I wouldn't be the
14 one to tell you on a scale where they lie.
15 Q. Fair enough. But what I want to make
16 sure --
17 A. Can somebody? I can't answer that.
18 Q. You're not suggesting that your
19 outside counsel is dictating the business terms
20 of your company?
21 A. Absolutely not. Absolutely not.
22 Q. So someone at NewSouth knows of the 45
23 remaining issues which ones are the most
24 important for them on a going forward business?
25 A. I think that's fair.

<p style="text-align: right;">Page 18</p> <p>1 Q. It's just not you? 2 A. Not me. 3 Q. Okay. Fair enough. Did you write 4 your testimony, Mr. Fury? 5 A. I would say that my testimony has been 6 developed over the course of really a couple of 7 years here of negotiations, that, you know, in 8 conjunction with all the Petitioners and through 9 the exchanges that we've had, the 10 collaborations, and through the advice of our -- 11 or through collaboration with our counsel that 12 this testimony has been developed. 13 Q. Did you actually physically write any 14 portion of your testimony? 15 A. I participated in the process of 16 writing that testimony. It was done under my 17 supervision. I submitted edits, suggestions, 18 made comments all to my counsel. 19 Q. I appreciate your answer, but let me 20 ask it again. Did you physically write the 21 testimony or did you get a draft to which you 22 made revisions to? 23 A. I received a draft and made revisions. 24 Q. From who? 25 A. That draft came from John Heitmann.</p>	<p style="text-align: right;">Page 20</p> <p>1 network? 2 A. I would say that from 1998 roughly 3 until about 2000 or 2001 that I was involved in 4 the planning, the network interconnection 5 with -- not to a large degree in the 6 provisioning of customer loops but more with -- 7 in provisioning of interconnection facilities, 8 transit trunks, local trunks, those type of 9 things, and also with the provisioning of long 10 haul and loops and things -- well, you asked 11 specifically with BellSouth, so we'll leave that 12 part out. 13 Q. Do you have any experience in the 14 issues related to NewSouth or NuVox's 15 provisioning of broadband services on a 16 BellSouth loop? 17 A. Those are complicated services that we 18 have engineers that do. I mean, that -- no, I 19 have not been involved in the data aspects of 20 those. That's an elaborate setup involving a 21 lot of technical things that I have not been 22 involved with. Engineering that I didn't do. 23 Q. What's your educational background? 24 A. I have a degree from Louisiana State 25 University in political science.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Would you be the person at NuVox, 2 NewSouth that would have the most knowledge 3 about the types of services that either company 4 provides, or should I defer that question to 5 another witness? 6 A. I would say I'm knowledgeable about 7 those things. Obviously, we have people that do 8 marketing and other types of things like that 9 that are going to be more knowledgeable about 10 those things than I am. 11 Q. Are you familiar with NuVox's Internet 12 service? 13 A. I know that we provide that service. 14 Q. And do you know specifically how you 15 provide it? 16 A. I think we provide it in a number of 17 ways. I don't know -- I don't know that there's 18 one specific way that we provide it. 19 Q. Do you know what -- strike that. 20 (PAUSE.) 21 Q. Mr. Fury, what is your background as 22 it relates to experience that you've had in 23 dealing with BellSouth's network and the 24 relationship that NuVox or NewSouth has had in 25 obtaining services that uses BellSouth's</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. So you're not an engineer by trade? 2 A. That's correct. 3 Q. Do you know if the NewSouth or NuVox 4 uses a BellSouth loop to provide broadband 5 service? 6 A. Yes, I think we do. 7 Q. And what services? What particular 8 services do you provide that are based upon a 9 BellSouth loop? And when I use services, I mean 10 broadband services. 11 A. I don't know how to break that down 12 any further than to just say that they are 13 broadband services. I -- 14 Q. What do you consider to be a broadband 15 service? 16 A. I just think of it as high speed data 17 transmissions. 18 Q. Would T-1 be considered a broadband 19 service? 20 A. I would say no. A T-1 could carry a 21 broadband service, but a T-1 is not a broadband 22 service. 23 Q. Is it your testimony today that NuVox 24 and NewSouth provides data services via a 25 BellSouth loop?</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 A. Yes.</p> <p>2 Q. Do you know what particular services</p> <p>3 that you sell that fit under your understanding</p> <p>4 of --</p> <p>5 A. I don't know that I -- I don't know</p> <p>6 that I can put any limits on it. Again, I would</p> <p>7 just say that, you know, the name broadband</p> <p>8 services encompasses a lot of different things</p> <p>9 and I think I would just say that they're</p> <p>10 broadband services. I don't really know -- I</p> <p>11 mean, and obviously our customers, you know, put</p> <p>12 those things to their use as they see fit.</p> <p>13 Q. Dedicated Internet access available in</p> <p>14 64 KBPS increments. Would that be considered a</p> <p>15 broadband service?</p> <p>16 MR. CAMPEN: Could you show the</p> <p>17 witness what you're referring to?</p> <p>18 A. Yeah, can I see that? Is that from</p> <p>19 our website?</p> <p>20 Q. I'm thinking about your counsel's</p> <p>21 question.</p> <p>22 A. Okay.</p> <p>23 Q. Would this document help you answer my</p> <p>24 question, seeing this document that I'm looking</p> <p>25 at?</p>	<p style="text-align: right;">Page 24</p> <p>1 need some context there. I think Dedicated</p> <p>2 Internet -- go ahead.</p> <p>3 MR. MEZA: Why don't we go ahead and</p> <p>4 mark it. This is Exhibit 3?</p> <p>5 THE REPORTER: Yes.</p> <p>6 MR. MEZA: And I don't have another</p> <p>7 copy.</p> <p>8 (DEPOSITION EXHIBIT NO. 3 MARKED.)</p> <p>9 Q. And I'm representing to you that I got</p> <p>10 this off the NuVox website identifying the</p> <p>11 services that you provide. And I've highlighted</p> <p>12 two of them.</p> <p>13 A. Okay.</p> <p>14 Q. One of the services is Dedicated</p> <p>15 Internet.</p> <p>16 A. Right. And it helps to see it</p> <p>17 juxtaposed with the Dialup Internet. Obviously,</p> <p>18 Dedicated Internet is similar to what you</p> <p>19 would -- would -- well, let me just say that</p> <p>20 Dedicated Internet would be the kind of always</p> <p>21 on, always available service that doesn't</p> <p>22 require dialup.</p> <p>23 Q. Is that purchase or is that provided</p> <p>24 via T-1 always?</p> <p>25 A. Again, I would say that T-1 is just a</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Can you repeat the question?</p> <p>2 Q. Do you consider dedicated Internet</p> <p>3 access available at 64 KBPS increments to be a</p> <p>4 broadband service?</p> <p>5 MR. CAMPEN: The question specifically</p> <p>6 for him at this junction is whether the document</p> <p>7 you have might enable him to better answer your</p> <p>8 question?</p> <p>9 MR. MEZA: Sure.</p> <p>10 MR. CAMPEN: Which is hard to answer</p> <p>11 without seeing the document.</p> <p>12 Q. Well, I mean, the question itself is,</p> <p>13 do you consider what I just read to you to be a</p> <p>14 broadband service? That's the underlying</p> <p>15 question.</p> <p>16 A. I would think -- I think that, yes,</p> <p>17 the fact that we offer that in increments of 64</p> <p>18 kilobytes is the crucial modifier there.</p> <p>19 Q. And in your understanding, is this</p> <p>20 offering provided pursuant to a -- or used --</p> <p>21 used as a BellSouth loop?</p> <p>22 A. Yes.</p> <p>23 Q. What does Dedicated Internet mean to</p> <p>24 you?</p> <p>25 A. Dedicated Internet. I think I would</p>	<p style="text-align: right;">Page 25</p> <p>1 carrier. It's a means to provide that service</p> <p>2 It's one of a number of means to provide that</p> <p>3 service.</p> <p>4 Q. And in the description on the website,</p> <p>5 you would agree with me that it says it's</p> <p>6 delivered via a T-1 facility?</p> <p>7 A. I would agree that that's what it</p> <p>8 says.</p> <p>9 Q. So as far as the website goes, you're</p> <p>10 delivering this dedicated Internet service via</p> <p>11 T-1, is that right, according to your website?</p> <p>12 A. Correct.</p> <p>13 Q. Now, do you purchase the T-1 from</p> <p>14 BellSouth?</p> <p>15 A. Yes.</p> <p>16 Q. In every instance?</p> <p>17 A. Well, I mean, we purchase T-1s from</p> <p>18 other outlets as well.</p> <p>19 Q. Do you consider a T-1 to be an</p> <p>20 unbundled network element?</p> <p>21 A. Again, a T-1 is made up of a number of</p> <p>22 things and has a particular definition in the</p> <p>23 rules, I think. So I would say that a T-1 in</p> <p>24 and of itself is just a means. It's not a --</p> <p>25 the loop is what we purchase.</p>

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1 Q. What is your --
2 A. T-1 is something that you do to a
3 loop. You make it a T-1 by adding things to it.
4 Q. Like what?
5 A. There are electronics. There's a
6 network interface device that make it a T-1,
7 that turn loops or turn combinations of network
8 elements into a T-1.
9 Q. How many loops are in a T-1?
10 A. I don't know that that's a proper way
11 to --
12 Q. Okay. Well, I apologize for my lack
13 of knowledge.
14 A. How many loops are -- I mean --
15 Q. Well, you're saying that a T-1 is
16 comprised of multiple --
17 A. A T-1 is discrete. A T-1 is discrete.
18 Q. What does that mean?
19 A. It stands alone as a unit of
20 bandwidth.
21 Q. Do you purchase a T-1 out of the
22 BellSouth tariff?
23 A. I believe that it's described -- no,
24 not -- well, yeah, there are special access
25 services that are purchased out of the tariff. I

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1 don't know that saying that they are T-1s is --
2 that the way that they're provisioned or how
3 they're provided is really not -- we're not
4 privy to that. We purchase -- we purchase a
5 special access service --
6 Q. Okay. And by --
7 A. -- that has certain characteristics.
8 Q. And by being special access, would you
9 agree with me that it's --
10 A. You know, we purchase UNEs as well.
11 Q. When you buy a T-1 --
12 A. Those are two different things.
13 Q. -- it's a discrete product, correct,
14 is that what you just told me, a T-1?
15 A. A T-1 is unit of bandwidth and it is a
16 carrier for that unit of bandwidth. It's how we
17 provide or it's how we carry signal. T-1 is
18 just a signal carrier.
19 Q. Is there anything else?
20 A. It's not a physical anything.
21 Q. Are there situations where you provide
22 Internet service to your customers that don't
23 involve a BellSouth service offer?
24 A. I don't know that I have the direct
25 knowledge to answer that question.

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1 Q. Fair enough. As it's described in
2 Exhibit 3, the Dedicated Internet via a T-1, is
3 it your understanding that that service is
4 provided by purchasing services from BellSouth?
5 A. That is one way that it's provided.
6 Q. What is another way?
7 A. I could answer that question
8 conceptually.
9 Q. Okay.
10 A. And say that a T-1 is one of a number
11 of ways that it could be provided. Broadband
12 services could be provided over copper loops
13 using electronics that are not provided by
14 BellSouth and using combinations of elements
15 that are currently available to us in our
16 interconnection agreement, both current and
17 future.
18 Q. Is T-1 a copper loop?
19 A. Is a T-1 a copper loop, no.
20 Q. Do you consider it to be dialup
21 internet access to constitute xDSL service?
22 A. Repeat that.
23 Q. Do you consider it to be Dialup
24 Internet access to constitute xDSL service?
25 A. What do you mean to constitute? Is it

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1 xDSL service, no. Can it be xDSL service?
2 Q. I didn't ask that.
3 A. Okay. Is it? No, it's not.
4 Q. Does NuVox offer a DSL -- an ADSL
5 product?
6 A. I think yes. Yes, we do.
7 Q. Do you know if it's identified in your
8 website?
9 A. I don't. I mean, I can only go on
10 what I'm looking at here. I mean, the website
11 does change over time, and I'm not sure what's
12 on there at any given time. There may be some
13 description of that service there. I really
14 don't know for sure.
15 Q. How many NuVox customers are receiving
16 your ADSL service?
17 A. I don't know.
18 Q. How do you provision this ADSL
19 service?
20 MR. CAMPEN: I'm going to interject
21 just for my own clarification. Wasn't his
22 testimony that he was not sure that they
23 provided the ADSL testimony -- ADSL product?
24 MR. MEZA. No, he said they did.
25 MR. CAMPEN: All right. Thank you.

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1 A. Let me ask -- let me have you ask that
2 question again, please, the last one.
3 Q. Do you know how NuVox -- let me make
4 sure I understand -- we both understand. When I
5 use NuVox or NewSouth interchanged, I'm meaning
6 the same entity.
7 A. That's fine.
8 Q. Okay. Do you know how NuVox
9 provisions this ADSL service to those customers
10 that receive it?
11 A. I don't know of any -- I don't know of
12 any limitations in how we would. I can't tell
13 you that I know specifically how it's
14 provisioned because I'm not involved in the
15 customer provisioning process. I know that
16 it's -- that it's -- I know that there are --
17 let me just say that I'm not involved in the
18 customer provisioning process, so I don't know
19 exactly what it is that they're ordering in
20 order to be able to provide that.
21 Q. Do you know if the service that you're
22 offering is provided pursuant to a BellSouth
23 loop?
24 A. Is that to say does it depend on a
25 BellSouth loop?

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1 Q. Yes.
2 A. It depends on our access to the
3 customer. I mean, BellSouth's loops are one way
4 to do that.
5 Q. Does NuVox have loops enter customer
6 premises?
7 A. I think there are cases of that where
8 we have direct interconnection from our switch
9 or from our switching center to a customer's
10 location.
11 Q. Do you have any understanding of the
12 magnitude of customers that are receiving an
13 ADSL service from you?
14 A. I could probably more properly
15 characterize the number that are receiving data
16 services than I could that particular service.
17 Q. So the answer would be no, you don't
18 know how many?
19 A. I can't tell you exactly -- no, I
20 couldn't characterize that.
21 Q. What about dialup customers?
22 A. I would say the dialup customers are
23 going to be few and far between.
24 Q. So the majority of your customers
25 receiving data services from NuVox would receive

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1 the dedicated Internet service?
2 A. Absolutely, the vast majority.
3 Q. The vast majority?
4 A. Yes.
5 Q. What's a load coil?
6 A. What is a load coil? I'm not really
7 an outside plan engineer. I think the load coil
8 is a way to -- it -- it -- I'm not really -- I'm
9 not sure. I can't answer that.
10 Q. You filed testimony on Issue 2-19,
11 Item 37?
12 A. Correct.
13 Q. Do you know what the language at issue
14 refers to?
15 A. Yes.
16 Q. What is your understanding of what the
17 disputed language refers to?
18 A. Let me have you point me to
19 exactly where --
20 Q. Sure, not a problem. Actually, it's
21 the language in --
22 A. Is it something you want to hand me
23 or is, it this --
24 Q. Yes.
25 A. Okay.

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1 (DEPOSITION EXHIBIT NO. 4 MARKED.)
2 Q. I'm going to hand you what's been
3 marked Exhibit 4. And it's -- and I represent
4 to you it is the most recent version of the
5 interconnection agreement --
6 A. Okay.
7 Q. -- containing disputed language except
8 for the general terms conditions, which we use
9 in this separate exhibit.
10 A. Got you.
11 Q. Okay.
12 A. Thank you.
13 Q. Give your Counsel a copy. And I'll
14 ask that you go to Section 2.12.2 on
15 Attachment 2.
16 MR. CAMPEN: Would that be page 24?
17 THE WITNESS: 27.
18 MR. CAMPEN: 27.
19 Q. 2.12.2. Do you see that?
20 A. Yes.
21 Q. Okay. And would you agree with me
22 that Item No. 37, Issue 2-19 deals with this
23 Section 2.12.2? And I'll refer you to page 62
24 of Exhibit 1 just to make sure we're talking
25 about the same thing.

<p style="text-align: right;">Page 34</p> <p>1 A. Right. Let me look at that. 2 (DISCUSSION OFF RECORD.) 3 Q. Look on page 62 of your direct. 4 A. Okay. 5 Q. Just to make sure that we agree that 6 this is the provision that's in dispute in this 7 issue. 8 A. Got you. Yes, I agree that this is 9 the -- 10 Q. And you would agree with me that the 11 Joint Petitioners had not submitted any language 12 for this issue or for this item marked as 13 2.12.2? 14 A. I would only be able to discern that 15 from looking at this document. 16 Q. But the document says that there's -- 17 A. I see a BellSouth version. 18 Q. Only? 19 A. Only. 20 Q. Okay. And in that BellSouth version, 21 would you agree with me that the language 22 proposed by BellSouth deals with the removal of 23 load coils? 24 A. Correct. 25 Q. And it's your testimony today that you</p>	<p style="text-align: right;">Page 36</p> <p>1 prohibit you from providing broadband service, 2 correct? 3 A. Correct. 4 Q. And the load coil is on a BellSouth 5 loop, correct? 6 A. The load coils on a copper loop would 7 prevent us from providing that type of service. 8 Q. Fair enough. And you are unable to 9 identify for me which broadband service or how 10 NuVox would provision a broadband service via a 11 BellSouth copper loop? 12 A. I can tell you how we would do it. I 13 can't give you the ins and outs. I mean, we 14 would provide -- we would provide some type of 15 integrated access device at the customer premise 16 that would also be -- it would be talking to 17 another device within our collocation. What 18 those are -- I mean, there are new products and 19 technologies that come out all the time that 20 enable broadband services over a copper loop. 21 I wouldn't be able to tell you what they are. 22 Q. Today is NuVox providing broadband 23 service to its customers via a BellSouth copper 24 loop? 25 A. I don't have any direct knowledge of</p>
<p style="text-align: right;">Page 35</p> <p>1 don't know what a load coil is? 2 A. It is something that's added to the 3 network. I mean, I don't know exactly what its 4 function is, no 5 Q. Okay. So you don't know what they're 6 used for then, do you? 7 A. I know that they impair our ability to 8 use these loops in the way that we'd like to use 9 them. 10 Q. And how do you want to use them? 11 A. We want to use them to be able to 12 provide our end user customers broadband 13 services. 14 Q. What type of -- when you use the 15 phrase broadband service, what specific type of 16 service would be provided pursuant to a 17 BellSouth loop? 18 A. I think we've already discussed that. 19 To me, a broadband service is exactly that, a 20 broadband service. And our customer's use of it 21 is their use of it. I mean, we provide them a 22 broadband service. I don't know what exactly 23 the -- how to break that down. 24 Q. Well, let me see if I can attack it a 25 different way. Your position is that load coils</p>	<p style="text-align: right;">Page 37</p> <p>1 that. 2 Q. So your statement that load coils 3 prohibit you from providing broadband service on 4 a copper loop is not based upon actual 5 experience but on your belief that if you did 6 provide this service, it would prohibit it. Is 7 that accurate? 8 MR. CAMPEN: Objection to the form. 9 A. I believe that it would, and I believe 10 that -- that -- hold on just a moment, please. 11 Q. Sure. 12 A. Well, okay, I believe that it would 13 and I believe that Mr. Fogle believes that it 14 would. 15 Q. Okay. For loops less than 18,000 16 feet, do you believe that a load coil would 17 prohibit you from providing whatever broadband 18 service you want on that loop -- copper loop? 19 A. I would have no way of knowing that. 20 Q. Do you doubt Mr. Fogle's testimony 21 that load coil removal for loops less than 22 18,000 feet is not necessary to provide 23 broadband service? 24 A. Was that his testimony? 25 Q. You're asking me?</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 A. I'm asking you. Can I see his 2 testimony? 3 Q. I don't have it. Subject to check. 4 Would you accept that? 5 A. Repeat that, please. 6 Q. If Mr. Fogle testified that 7 removing -- there's no need to remove load coils 8 for loops that are less than 18,000 feet in 9 order to provide broadband service or xDSL 10 service, would you accept that? 11 A. I really couldn't speak to what 12 Mr. Fogle knows or doesn't know. All I would 13 say is that I believe that the rules provide for 14 us to request the removal of that load coil and 15 we are asserting that as a right and as an 16 obligation of BellSouth. 17 Q. Today you have no knowledge of any 18 instance in which you were prohibited from 19 providing broadband service on a copper loop as 20 a result of a load coil; is that correct? 21 A. I cannot point you to a specific case 22 where we have ordered a loop, and I have no 23 knowledge of us having tested that theory. 24 Q. Okay. Do you know how many loops in 25 BellSouth's network in North Carolina contain</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Did you write this testimony? 2 A. I discussed this at length with my 3 counsel. 4 Q. This testimony is based upon what you 5 previously told me? It's not based upon any 6 actual experience of NuVox, is it? 7 A. It's based upon conversation with 8 colleagues and engineers at my company that are 9 much more familiar with the technical aspects of 10 how those services are provided than I am. And 11 based on conversations that I've had with them, 12 those things arose as a concern, and that's why 13 it's in the testimony. 14 Q. But it's not based upon actual 15 experience? 16 A. It's based upon the experiences of the 17 engineers in my company who are -- who we hire 18 to perform those or make those judgments. 19 Q. Is it based upon NuVox ordering a loop 20 that's in excess of 18,000 that has load coil on 21 it? 22 A. I don't think NuVox could order a loop 23 in excess of 18,000 feet that has a load coil. 24 Q. Why not? 25 A. I think -- I believe that we've</p>
<p style="text-align: right;">Page 39</p> <p>1 loops that are in excess of 18,000 feet? 2 A. No, I don't. 3 Q. Are you aware of any industry 4 standards regarding when load coils should be 5 placed or removed? 6 A. I'm aware that there are standards for 7 that. Those were developed by Bell Corp, I 8 believe, and are contained in their technical 9 spec documents. I've seen them. I can't tell 10 you that I recall everything about them. 11 Q. So do you remember what they said 12 regarding the removal of load coils -- 13 A. No. 14 Q. -- to allow for data -- 15 A. No. 16 Q. -- high speed data transmission? 17 A. No, I don't. 18 Q. Look on page 63 of your North Carolina 19 Direct, which is Exhibit 1, lines 2 to 3. You 20 state that in refusing to condition loops over 21 18,000 feet in length, BellSouth may preclude 22 Petitioners from providing innovative services 23 to a great proportion of customers. Do you see 24 that? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 41</p> <p>1 been -- we have -- I believe that those have 2 been canceled or those orders have been 3 rejected, if we have. If I remember right, we 4 have tried to order one. I think we even had 5 one that was canceled that was just over 9,000 6 feet. 7 Q. Do you know why the order was 8 canceled? 9 A. I just -- all I know is that our 10 Provisioners were told that those loops could 11 not be provisioned. I would have to check on 12 that to go and see what specific orders over 13 9,000 feet or over 18,000 feet, but I'm pretty 14 sure that those orders were placed and that 15 those were either rejected or canceled after 16 they were placed. 17 Q. Have you ever done an analysis to 18 determine how much it would cost pursuant to 19 BellSouth's FCC No. 2 tariff to remove load 20 coils in excess -- for loops in excess of 18,000 21 feet? 22 A. I personally have not done that 23 analysis. 24 Q. Has anyone at NuVox or NewSouth done 25 that?</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 A. I don't have any direct knowledge of 2 that analysis having been done. I wouldn't 3 preclude it as a possibility. 4 Q. Sure. Let me see if I can refine our 5 dispute. There's no dispute that BellSouth 6 removed load coils for loops that are less than 7 18,000 feet; is that right? 8 A. I believe that that's something that 9 BellSouth does that we would -- that that's what 10 we have the right to ask for and can order that 11 and receive that. Obviously, we would not have 12 a dispute about that. 13 Q. The dispute -- 14 A. The load coil removal is what we are 15 requesting. And so if you do it on a loop under 16 18,000 feet, then you're doing what we're 17 requesting. 18 Q. And so the dispute is limited to when 19 the loop is in excess of 18,000 feet, correct? 20 A. But when you say the dispute, I 21 mean -- 22 Q. As it relates to issue -- 23 A. As it relates just to this issue? 24 Q. Yes. 25 A. And I would say that removal of load</p>	<p style="text-align: right;">Page 44</p> <p>1 through technology and innovation in the 2 Telecom -- well, in the vendor market or through 3 their equipment. 4 Q. Is it your position that these 5 innovative services do not work on loops in 6 excess of 18,000 feet if there are load coils on 7 the loop? 8 A. We have reason to believe that that is 9 true. 10 Q. And what is your understanding based 11 on? 12 A. That's based on my conversations with 13 colleagues. 14 Q. Who were these colleagues? 15 A. Engineers at NuVox. 16 Q. What's their names? 17 A. Our director of network services. 18 Q. Who is that? 19 A. Mr. Devon Hickerson. Mr. Ray Drouse 20 is our vice president. Through conversations 21 with those guys Mr. Bennie Gross. 22 Q. So these are all services that NuVox 23 would like to implement in the future that 24 currently are not being implemented today; is 25 that right?</p>
<p style="text-align: right;">Page 43</p> <p>1 coils is not the only thing at issue. 2 Q. Well, I know that we have other 3 disputes related to this, but as far as 37 goes? 4 A. Okay. That's fair. 5 Q. Now, on page 63, lines 2 and 3, you 6 refer to innovative services. What innovative 7 services are you referring to? 8 A. Again, I would say that it is our 9 desire to provide broadband services over copper 10 loops. We see those as innovative. We believe 11 that -- we discuss with vendors and 12 manufacturers of electronics, and, you know, 13 through those discussions we learn that, you 14 know, we can provide broadband services over 15 these copper loops at ever changing bandwidths, 16 ever increasing bandwidths, higher bandwidths, 17 which is ultimately what the consumers are 18 looking for; 3 megabits, 6 megabits, 19 12 megabits, more, more, more. 20 Q. When you agreed or wrote the phrase 21 innovative service, were you thinking of a 22 particular service? 23 A. No. I was -- I think what's 24 contemplated there is any particular -- any 25 future service that might be made possible</p>	<p style="text-align: right;">Page 45</p> <p>1 A. These are services that NuVox would 2 like to be able to offer, right. 3 Q. Now, in your testimony you mentioned 4 Etherloop? Is that how you pronounce it? 5 A. Etherloop, yeah. 6 Q. What is Etherloop? 7 A. Etherloop is another broadband. It's 8 a means of delivering broadband. Again, I 9 couldn't tell you exactly. I mean, I know there 10 are Etherloop IADs, integrated access devices, 11 that make Etherloop possible. And -- well, 12 that's it. 13 Q. Okay. On page 65, line 6 of your 14 direct testimony, you state that we are 15 currently exploring at least two technologies. 16 A. Correct. 17 Q. What do you mean by currently 18 exploring? 19 A. What I mean by that is that we've had 20 discussions with vendors. We've had discussions 21 among our engineers, marketers, et cetera, about 22 those services, how we would provide those 23 services, what opportunities might be available 24 to us in order to provide those, and what that 25 would mean to our customers and our product --</p>

<p style="text-align: right;">Page 46</p> <p>1 our product offering. 2 Q. Do you know how much it costs? 3 A. Do I know how much what costs? 4 Q. Ethernet -- Etherloop, I'm sorry. 5 A. What particular aspect of it? How 6 much we would charge for it? 7 Q. How much it would cost you to -- 8 A. How much it would cost for us to 9 deliver that service? 10 Q. Yeah. 11 A. It would be the cost of the loop, plus 12 the cost of whatever electronics, plus the cost 13 of our collocation spaces, all the elements that 14 we are already purchasing. I mean, it would be 15 a calculation based on all of the things that 16 we're already purchasing out of the 17 interconnection agreement, plus our providing 18 our customer -- our end user customer a device. 19 Q. All right. And that's what I was 20 referring to, the device. Do you know how much 21 the device costs? 22 A. Do I know how much that device cost? 23 No, I do not know. 24 Q. Have you received any price quotes? 25 A. I don't know.</p>	<p style="text-align: right;">Page 48</p> <p>1 to is at page 65, line 8 of Exhibit 1. It's all 2 caps G.HDSL. 3 MR. MEZA: Thank you, Mr. Campen. 4 Q. Do you know if Etherloop would still 5 work with the existence of load coils or bridged 6 tap on the loop? 7 A. I know that both of those have been 8 raised as concerns that would impair the ability 9 of both of these services to work. How they 10 impair it would be something that I would have 11 heard through my engineers. I probably couldn't 12 repeat it back to you as to how it actually 13 impedes it. I know that loop -- that a bridged 14 tap introduces length and other uncertainties 15 and things into the provision of the circuit 16 that make it difficult to precisely control 17 that -- that bandwidth and the amount of 18 attenuation, et cetera, on that line. 19 Q. Have you seen any specs or 20 documentation from the provider of the Etherloop 21 regarding whether or not load coil would 22 prohibit the product from working? 23 A. I have not seen anything like that. 24 Q. What about G.HDSL? 25 A. I have not seen anything like that.</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Is it in your budget for '05? 2 A. I don't know. 3 Q. '06? 4 A. I don't know. 5 Q. '07? 6 A. I don't know. 7 Q. Did you assist in the preparation of 8 discovery responses on behalf of NewSouth and 9 NuVox? 10 A. Yes. 11 Q. Does NuVox or NewSouth have a 12 deployment date for these two new technologies? 13 A. Not to my knowledge. 14 Q. Do you know how long this technology 15 has been around? 16 A. I would say that the G.HDSL has been 17 around for -- well, let's say I have direct 18 knowledge of its existence for at least the last 19 year or more -- more than a year. 20 Q. What about the Etherloop? 21 A. Etherloop, oh, is older than that, but 22 I'm not exactly sure how much. 23 MR. CAMPEN: Just for the record, 24 Mr. Meza, the witness used the term G.HDSL. For 25 the Reporter's benefit, the term he's referring</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. Have you reviewed any specs or any 2 documentations relating to each of these 3 technologies before filing your testimony? 4 A. Again, my understanding of the 5 limitations of the loop and what we could 6 provide over that loop using these technologies 7 comes from conversations with our engineers. 8 They're the ones that are paid to know those 9 things. 10 MR. MEZA: Why don't we take a lunch 11 break? 12 (LUNCH BREAK 12:45 p.m. to 1:30 p.m.) 13 BY MR. MEZA: 14 Q. Before we move onto the next issue, 15 let me ask you one more question on Issue 37. 16 A. Okay. 17 Q. Do you know if a carrier like NuVox 18 could purchase a T-1 from a company other than 19 BellSouth? 20 A. To serve an end user? 21 Q. Yes. 22 A. Would you qualify it that way? I 23 think there are carriers that provide those 24 kinds of services. I don't have any personal 25 knowledge of who they might be or whether we</p>

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 have contracts with any of them. But suffice it 2 to say, yes, there are carriers that do provide 3 that. 4 Q. What's a bridged tap? 5 A. Well, it's literally a tap on a 6 circuit. It's an extension off of a pair in 7 a -- in any cable run that goes off into another 8 direction or -- and it kind of adds length to 9 that loop. 10 Q. Do you know what it's used for or why 11 one would be installed or multiple ones would be 12 installed in a loop? 13 A. Well, I think it has to do with just 14 the way that the cable is designed. You know, 15 you have a main feeder that runs out from the CO 16 and then you have -- the taps run off and to 17 feed Neighborhood A and Neighborhood B and 18 Neighborhood C. Along that pair they're clamped 19 on and extend out into that neighborhood. 20 Q. Do you know if it has anything to do 21 with the enhancement of voice service? 22 A. I don't know that it is an enhancement 23 of a voice service, but, I mean, it's -- it 24 arises out of -- out of the way that the cable 25 plan is built out. I mean, it's just on the</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. So that's in dispute when it's over 2 6,000 feet; is that correct? 3 A. Correct. 4 Q. And there's also a situation where the 5 bridged tap is in between zero and 2,500 feet; 6 is that right? 7 A. Correct. 8 Q. And in that instance, BellSouth, if 9 you want it removed, will charge you the tariff 10 rate, FCC No. 1 tariff; is that right? 11 A. Well, that's what BellSouth wants to 12 charge. That's not with we'd like to see. 13 Q. For zero to 2,500 feet? 14 A. We would like to see all bridged tap 15 removed at TELRIC rates. All -- all -- all -- 16 yeah, sorry. That's all. 17 Q. Look at your rebuttal testimony, which 18 is Exhibit 2, page 62. 19 A. Page 62. Got it. 20 Q. Lines 3 to 5. 21 A. Uh-huh. 22 Q. Lines 2 to 5. 23 A. Yes. 24 Q. Primary disagreement is over 25 BellSouth's desire to charge nonTELRIC service</p>
<p style="text-align: right;">Page 51</p> <p>1 circuit. It may or may not become part of a loop 2 serving an end user customer of BellSouth or of 3 NewSouth, NuVox. 4 Q. Who installs a bridged tap? 5 A. The owner of the loop. In this case, 6 the ILEC. Obviously, BellSouth wouldn't do 7 that. 8 Q. Do you know when BellSouth -- in what 9 instances BellSouth has agreed to remove bridged 10 taps? 11 A. What we've agreed to in this 12 agreement? Yeah. I believe the proposed 13 language requires BellSouth to remove bridged 14 tap that serves no network design purpose and is 15 between 2,500 and 6,000 feet. 16 Q. All right. Let's back up a little 17 bit. Do you agree that BellSouth will remove 18 bridged taps in excess of 6,000 feet at TELRIC? 19 A. I believe that BellSouth removes 20 bridged taps in excess of 6,000 feet at no 21 charge. 22 Q. Even better, as far as you're 23 concerned. 24 A. At no additional charge. I don't know 25 where that charge --</p>	<p style="text-align: right;">Page 53</p> <p>1 construction rates when Joint Petitioners 2 request the removal of any unnecessary and 3 nonexcessive bridged tap between zero and 4 2,500 feet. Do you see that? 5 A. Yes. 6 Q. So is the issue for the distinctions 7 that BellSouth has made or do you agree that 8 you'll pay bridged taps -- removal of bridged 9 taps at tariff rates between zero and 10 2,500 feet? 11 A. We do not agree to that. 12 Q. Now, do you have any proof that 13 existence of bridged taps between zero and 2,500 14 feet will degrade the loop's capability to 15 provide xDSL service? 16 A. I don't directly have that. 17 Q. Does NuVox? 18 A. I don't know. 19 Q. Have you reviewed any industry 20 standards relating to when bridged taps should 21 be removed and at what length before writing 22 your testimony? 23 A. As I've said earlier, I have a cursory 24 knowledge of those standards. I've seen those 25 standards, but as far as knowing what they say</p>

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1 expressly about bridged tap of any length, I
2 really don't know when it's -- when the removal
3 of them is called for. I just know that we
4 believe -- again, we're asserting that the
5 removal of bridged tap is one of the things that
6 is required by the rules.
7 Q. Presume with me that a bridged tap
8 between zero and 6,000 feet will not impair xDSL
9 service.
10 A. I wouldn't care to make that
11 presumption, but if you'll have me make it.
12 Q. Please accept that.
13 A. Okay. I will.
14 Q. Is it your position that BellSouth
15 should still remove bridged taps if there is no
16 impairment on your ability to provide xDSL
17 service on that loop?
18 A. I believe that BellSouth should remove
19 that bridged tap. Yes, I believe that BellSouth
20 should remove that bridged tap.
21 Q. Regardless of whether it impairs your
22 ability to provide xDSL service under the loop?
23 MR. CAMPEN: Under the assumption
24 stated in your question?
25 MR. MEZA. Yes.

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1 A. Let me just say that I don't know that
2 that would be the only concern with bridged tap,
3 that it would impair our ability to -- there
4 might be other engineering concerns that would
5 arise due to the location of the bridged tap,
6 the -- you know, the difficulties that arise in
7 provisioning these services with bridged taps in
8 place that may not have anything necessarily to
9 do with impairment but have to do with what it
10 takes to actually provision the service. And
11 that's why we get loop makeups and all those
12 other kinds of things so that we know the
13 characteristics of those lines and can provision
14 those services.
15 Q. How many times have you reported to
16 BellSouth that existence of the bridged tap is
17 prohibiting you from providing any service on
18 the loop?
19 A. I don't know.
20 Q. Has that ever occurred in your
21 experience?
22 A. Has it occurred that we have -- that
23 we have -- have we -- yes, maintenance and
24 repair issues related to bridged tap, yes,
25 absolutely.

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1 Q. And how do you know that?
2 A. I can't recall a specific customer
3 name or ticket information, but there -- I do
4 recall a case, and it really wasn't recently.
5 It was probably within the last year though that
6 we had a trouble call on a circuit that was --
7 but it wasn't a -- it wasn't a -- it was a --
8 It wasn't a broadband service. I mean, it was
9 just a general T-1 issue.
10 Q. Do you know what the loop --
11 A. And I think the bridged tap was
12 impair -- was somehow impairing or
13 interfering -- you know, the loop
14 characteristics or the line billed out or
15 something was wrong in the central office when
16 it was provisioned and somebody didn't have
17 something -- the location of the bridged tap
18 wasn't properly identified on the loop and it
19 had to -- somebody had to go back out there and
20 say, it's at X feet, so that they could go back
21 and recalibrate or re --
22 Q. Did that result in any tariff charges
23 on NuVox?
24 A. I can't say whether it did or didn't.
25 Q. Do you know if the loop in question

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1 was in excess of 6,000 feet?
2 A. No, I don't.
3 Q. Do you remember any other instance?
4 A. That's just the -- that's one that
5 comes to mind. I can't say that there haven't
6 been others, but that's one. And I can imagine,
7 you know, the likelihood is that having observed
8 that one time that, you know, with the records
9 that we have and relying on records from the
10 field, we know that these things happen from
11 time to time, that stuff is, you know,
12 improperly reflected in the records and has to
13 be -- somebody has to actually go touch it.
14 Q. But that would be speculation on your
15 part because you don't remember any other
16 instance; is that right?
17 A. It's speculation. I wouldn't call it
18 wild speculation. I mean, it's -- it is
19 somewhat speculative.
20 Q. Okay. Do you know if BellSouth has
21 reached agreement with CLECs as a whole
22 regarding when it will remove bridged taps and
23 at what prices?
24 MR. CAMPEN: Objection to the form.
25 A. Can you repeat it, please?

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1 Q. Sure. Do you know if BellSouth has
2 reached agreement with CLECs through an industry
3 collaborative regarding when it will remove
4 bridged taps and at what prices?
5 A. Is this a reference to the shared loop
6 collaborative?
7 Q. Just a general question. I'm not
8 restricting it to any specific --
9 A. I mean, that would be -- that would be
10 the only -- that's the only forum that I'm
11 familiar with where those issues may have been
12 discussed. What was agreed or where, you know,
13 whether -- whether any of those things were
14 incorporated into folks' agreements, I don't
15 know.
16 Q. Do you think if the industry standards
17 establish that there is no need to remove
18 bridged taps for -- that are less than 6,000
19 feet or don't occur within 6,000 feet of the
20 origin of the loop, do you think that that
21 should be the standard that BellSouth has held
22 to?
23 MR. CAMPEN: Objection to the form of
24 the question.
25 A. Yeah. And I don't think -- I don't

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1 think that an industry standard should supersede
2 the rules.
3 Q. Do you think the manner in which
4 BellSouth treats its own customers regarding
5 when it removes bridged taps is relevant?
6 A. No, I don't.
7 Q. Why not?
8 A. Because I believe that -- you know,
9 honestly that that's really not my concern how
10 BellSouth treats their customers. We have
11 concerns for our customers and we want to treat
12 our customers in a particular way, and, you
13 know, BellSouth's standards, whether they do or
14 don't comport with the rules, are not -- that's
15 not our interest. Our interest is in asking for
16 something in the agreement that follows the
17 rule, that tracks the rule.
18 Q. Do you know if the rule or the FCC's
19 orders state that the manner in which BellSouth
20 treats its own customers is the standard to
21 which it should treat you?
22 A. I know that it doesn't.
23 Q. How do you know that?
24 A. Well, it's in my testimony.
25 Q. Okay.

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1 A. Well, I'll just read from my -- I
2 mean, reading from my testimony, nothing in
3 federal law supports refusal to remove bridged
4 tap regardless of the length of the location on
5 the loop.
6 Q. Just slow down for the court reporter.
7 A. Oh, I'm sorry.
8 MR. MEZA: She's taking it all down.
9 THE REPORTER: That's fine.
10 THE WITNESS: I'll read it again?
11 THE REPORTER: No.
12 A. No. I'm trying to recall exactly
13 where that was. I believe it was -- yeah, I
14 believe it was in our rebuttal to Mr. Fogle's
15 testimony. Is that this?
16 Q. I think that is it.
17 A. Can I get you to repeat the question,
18 please?
19 Q. I asked you if you believe that the
20 standard, as articulated by the FCC either in
21 its orders or in a rule, is to what level does
22 BellSouth provide line conditioning, in this
23 case bridged tap removal, for its own customers
24 with regard to that standard?
25 A. Right. Obviously, we disagree with

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1 that. And, again, reading from my testimony,
2 BellSouth's line conditioning obligation is not
3 limited to what BellSouth decides it will
4 routinely do for its customer.
5 Q. Did you write that statement?
6 A. That is my testimony.
7 Q. Did you write it?
8 A. I developed that with my counsel
9 Q. Did you read any federal law before
10 making that decision?
11 A. I've read the rule, yes.
12 Q. What rule?
13 A. It's in here. I think it's 5 --
14 Q. 51319?
15 A. 319 A 13 on line conditioning rules.
16 Q. Did you read the TRO in conjunction
17 with reading that rule?
18 A. I have reviewed the TRO. I can't
19 recall what it specifically states on line
20 conditioning. Do you have that?
21 Q. Let me ask. Did you base your opinion
22 on what BellSouth's obligations are for line
23 conditioning on a TRO at all?
24 A. I based it strictly on the rule that's
25 cited in the testimony.

<p style="text-align: right;">Page 62</p> <p>1 Q. And sitting here today, you're not 2 familiar with what the TRO says regard -- or how 3 it defines line conditioning; is that true? 4 A. Yes. 5 Q. If there is an inconsistency between 6 the TRO and the rule, what in your opinion 7 governs? 8 MR. CAMPEN: Objection to form. Calls 9 for a legal conclusion. This witness is not a 10 lawyer. 11 THE WITNESS: Do I answer? 12 MR. CAMPEN: You can answer the 13 question. 14 A. Repeat it, please. 15 Q. If there is an inconsistency regarding 16 the scope of BellSouth's obligation to perform 17 line conditioning between the TRO and the FCC 18 rules, what -- which one, in your opinion, 19 governs? 20 A. Again, I would have to say that the 21 rule would have to be -- the rule would have to 22 be written subsequent to what comes out of the 23 TRO. I mean, eventually that will be codified, 24 I would imagine or whatever comes through the 25 process is going to be codified in the rules.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. You're not suggesting that they also 2 look at the TRO for guidance; is that correct? 3 MR. CAMPEN: Objection to form. Could 4 you point the witness to the testimony that 5 you've characterized? 6 MR. MEZA: Well, there's an absence of 7 testimony relating to the TRO, so. 8 A. And I didn't testify to that. And I 9 don't I would speculate -- I mean, it would be 10 speculation on my part as to what or how the 11 North Carolina Utilities Commission would 12 incorporate that into their thinking or into 13 their rule making. You know, that will be 14 determined at some future date. And as far as 15 we're concerned, that's not -- the disagreement 16 shouldn't be formed by that. It's formed by the 17 existing rule. 18 Q. So -- you're still confusing me. Are 19 you saying that the TRO definition of line 20 conditioning is inapplicable or not? 21 A. I can't say for sure. 22 Q. Okay. Is it your opinion that FCC 23 rules trump an FCC order? 24 MR. CAMPEN: Objection to form of the 25 question. Calls for a legal conclusion.</p>
<p style="text-align: right;">Page 63</p> <p>1 Right now, there is nothing in the rule that -- 2 or I don't know, I know there's a decision, I 3 just don't know what's been distilled from that. 4 And, again, like as counsel said, I'm not 5 rendering a legal judgment on that. 6 Q. So you're not saying which one -- 7 you're not suggesting that as a matter of law 8 the North Carolina Utilities Commission should 9 look to the rule and not the order. You're just 10 saying that the order says what it says. Is 11 that accurate? 12 MR. CAMPEN: Objection as to form. 13 A. Again, that's what it is that binds 14 the North Carolina Utilities Commission from the 15 TRO or from these rules. I'm only interested in 16 the rules that are -- that are -- that I know 17 are in effect or that are used in forming this 18 agreement. I don't know that -- I just -- I 19 can't speculate as to what the North Carolina 20 Utility Commission would do in light of the TRO. 21 Q. Let me try it another way. You're 22 suggesting that the North Carolina Commission 23 use the rule as the standard, correct, for line 24 commissioning? 25 A. Yes, that would be our position.</p>	<p style="text-align: right;">Page 65</p> <p>1 A. I can't even -- I can't give you an 2 opinion on that. I don't even have a basis for 3 making that judgment. 4 Q. Okay. On page 66, line 21 of your 5 direct testimony, and I think you've actually 6 referred to this statement. You said, nothing 7 in federal law supports a refusal to remove 8 bridged tap regardless of the length of or their 9 location on the loop. Do you see that? 10 A. Yes. 11 Q. What federal law are you referring to? 12 A. What line? 13 Q. Line 21. 14 A. Line 21 on page 66? 15 Q. Yes. 16 A. Oh, wait a minute. Am I looking at 17 the right thing? 18 Q. Should be Exhibit 1. 19 A. Is it? 20 MR. CAMPEN: Lines 21 and 22. 21 A. Oh, okay. I'm sorry, starting on 21. 22 Okay. Sorry. Right. Again, that's referencing 23 the line conditioning rule. 24 Q. All right. Well, is that an accurate 25 statement to say nothing in federal law when all</p>

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1 you're referring to is the FCC rule?
2 A. That's my position, yes.
3 Q. What federal law did you review before
4 making that statement or agreeing to that
5 statement?
6 A. I looked at that rule.
7 Q. And that rule only; is that correct?
8 A. That's what I looked at.
9 Q. Did you look at it before or after you
10 filed your testimony?
11 A. I've looked at it. I've looked at it
12 before, not with the degree of scrutiny that I
13 have more recently, but, yes, I've looked at it.
14 Q. Do you think BellSouth has an
15 obligation to create a superior network for
16 NuVox?
17 MR. CAMPEN: Objection to form.
18 A. I think that statement is clear that
19 we are not asking for the creation of a superior
20 network. So I would say no.
21 Q. Okay. If you're asking BellSouth to
22 do something to its network that modifies the
23 network, that enhances it, that it doesn't --
24 A. I wouldn't say it enhances. It does
25 modify. It changes the network.

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1 Q. I wasn't quite finished with my
2 question.
3 A. I apologize.
4 Q. Okay. If you're asking BellSouth to
5 do something to its network that it currently
6 does not provide for its own customers that
7 allows you to do something that currently you
8 don't have the ability to do, you don't consider
9 that an enhancement?
10 A. No, I don't. What our view of that is
11 that it's a -- it's cleaning up the network.
12 It's making the network useful for the purpose
13 of providing service we want to provide. We're
14 not asking for new network, superior network.
15 We're asking for a clean copper loop.
16 Q. Is there any prohibition against the
17 placement of bridged taps under federal law?
18 A. Any prohibition? Not to my knowledge.
19 Q. Do you agree -- whether or not we can
20 agree on whether removal of bridged taps
21 constitutes a superior network, do you agree
22 with the concept that BellSouth does not have an
23 obligation to create a superior network for the
24 CLECs?
25 A. Yeah, I think I would agree with that.

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1 Q. Now, have you participated in any
2 industry collaboratives where the removal of
3 bridged taps was discussed?
4 A. I participated in the -- only in the
5 aspect of ordering and how these loops are
6 ordered through the CCP, but not in the line of
7 sharing collaborative. If that -- I mean,
8 that's the only one I know of where removal or
9 any line conditioning at all was discussed.
10 Q. So to the extent a collaborative has
11 dealt with line conditioning issues, you have
12 not been involved with them?
13 A. I was not involved in that particular
14 collaborative, no.
15 Q. Do you know what percentage of loops
16 in North Carolina contain bridged taps between
17 zero and 6,000 feet?
18 A. I don't.
19 Q. What about region wide?
20 A. No.
21 Q. Have you ever reviewed BellSouth's
22 tariff rates for special construction charges?
23 A. Yes.
24 Q. What are they?
25 A. What are the actual rates?

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1 Q. Yeah.
2 A. I really -- I can't recall.
3 Q. When did you look at them?
4 A. Gosh, I look at the tariff frequently.
5 I can't recall the last time I looked at special
6 construction, but -- I just can't recall when
7 the last time I looked at them.
8 Q. Has NuVox ever asked BellSouth to
9 remove a bridged tap and paid the FCC tariff
10 rate for that work?
11 A. I can't say with any certainty.
12 Q. Have you ever performed a cost study
13 or performed a calculation as to see how much it
14 would cost using the tariff rates to remove
15 bridged taps between zero and 6,000 feet?
16 A. I haven't performed such a study, but
17 I'm operating on the assumption that tariff
18 rates are higher with respect to a number of
19 elements with -- with a number of elements as
20 compared to TELRIC rates for those same elements
21 or comparable elements.
22 Q. Look on page 62 of Exhibit 2,
23 lines 11 through 14.
24 A. Exhibit 2. All right, I'm there.
25 Q. And you state, application of such

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<p>1 rates would, in effect, preclude us from 2 obtaining a loop with less than 2,500 feet of 3 bridged tap, thus leading to the impairment of 4 DSL or other advance services that we could 5 provide. Do you see that? 6 A. Yes. 7 Q. Do you know for a fact that a loop 8 with less than 2,500 feet of bridged tap will 9 impair your ability to provide DSL or other 10 advanced services? 11 A. I would say that it's not an absolute. 12 I would say there are -- there, depending on 13 conditions, it could or it might not. 14 Q. Would it be more accurate to frame 15 your testimony as could lead to the impairment 16 rather than leading to the impairment? 17 MR. CAMPEN: Objection to the form. 18 A. I believe what's stated or what is 19 really meant by that statement is the rate 20 itself, not -- it's not about the impairment. 21 What we're saying is impairing us there is the 22 rate, is that we want to -- we're not paying a 23 special construction rate. We don't know what 24 that rate would be, and so, therefore, we have 25 absolutely no -- we would not be inclined to</p>	<p>1 A. Correct. 2 Q. All right. If you don't pay tariff 3 rates, when I read this sentence, it leads me to 4 believe that you believe that a loop that has 5 less than 2,500 feet of bridged tap, your 6 ability to provide DSL will be impaired. And my 7 question to you is, are you asserting that 8 unless you have a loop with less than 2,500 feet 9 of bridged tap, you will not be able to provide 10 DSL or other advanced services on that loop? 11 A. Yes. 12 Q. That's your testimony? 13 A. Yes. 14 Q. And what do you have to support that? 15 A. I think that's been the judgment of 16 our engineers and the people that design these 17 circuits is that it's an impairment that we want 18 to have removed and that it affects our ability 19 to provision these services with -- with any 20 regularity or certainty or predictability. Like 21 I said, there's a number of things -- there's a 22 number of factors other than just the bridged 23 tap itself. There's a lot of engineering 24 considerations that removal of that bridged tap 25 makes provisioning of those services easier,</p>
Page 71	Page 73
<p>1 order or request those bridged tap removals at 2 that rate. That's the impairment. I mean, 3 that's kind of -- let me -- let me read it 4 again. 5 I'll read it. Application of such 6 rates would, in effect, preclude us from 7 obtaining a loop with less than 2,500 feet of 8 bridged tap thus leading to impairment of DSL or 9 other advance services that we could provide. 10 Q. So if you don't remove the bridged 11 tap, when I read your sentence, it equates to 12 impairment of DSL? 13 A. I think the sentence is about the 14 rates. The first clause there is the 15 application of the rates. So that it's the -- I 16 mean, we've discussed the impairment that comes 17 from the bridged tap. This, I think, is 18 specifically saying that the rate is -- the 19 rate, not only is the -- not only is the bridged 20 tap itself an impairment, but the rate is an 21 impairment into our willingness to choose that. 22 Q. Okay. But you know, I think we're 23 close. Let me just make we can agree. You 24 don't want to pay tariff rates for the removal 25 of a bridged tap at all?</p>	<p>1 faster, more cost effective. There's a number 2 of ways in which that helps us provision those 3 services. 4 Q. What advance services are you 5 referring to on line 13? 6 A. Again, broadband service. 7 Q. As it's reflected in your testimony, 8 you're limiting it to DSL service or broadband 9 service? 10 A. DSL or other advance services. 11 Q. Which you just told me means 12 broadband? 13 A. I wouldn't want to limit it to that. 14 Q. What did you mean -- I'm sorry. 15 A. Go -- 16 Q. When you wrote this sentence or agreed 17 to it, what did you mean by the inclusion of 18 advanced services? 19 A. I would -- I would construe the same 20 meaning that we've been discussing this morning, 21 this afternoon, that the services that we've 22 discussed that we want to provide to our 23 customer, some of which are -- we expect to be 24 available in the future. Advance services means 25 services that may be available in the future,</p>

<p style="text-align: right;">Page 74</p> <p>1 some that are available now that can be provided 2 over these loops, over copper loops. 3 Q. What advance services are you 4 providing on these copper loops today? 5 MR. CAMPEN: Asked and answered. 6 A. I think we've already answered that. 7 Q. Well, please say it -- 8 A. You want me to answer it again? 9 Q. Yes. 10 THE WITNESS: Do I answer it again? 11 MR. CAMPEN: You can answer the 12 question after my objection. 13 Q. And specifically, I want to be very 14 clear, because I don't think you've already 15 answered this question. 16 A. Okay. Repeat. Repeat. 17 Q. What advance services is NuVox 18 currently providing on copper loops today? 19 A. I think that it would be proper to say 20 that we have a -- we order unbundled copper 21 loops to provide a T-1 type service or a 22 broadband service over 64 megabits. I mean, We 23 use copper unbundled copper loops now. You 24 know, we order unbundled copper loops now. We 25 provide broadband service over that as we've</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Everything identified on Exhibit 3 is 2 an advance service? 3 A. I see things there that are not 4 advance services. 5 Q. What is an advance service? 6 A. I mean, I wouldn't call -- I don't 7 know that I would call dialup Internet an 8 advance service. But the provision of broadband 9 or voice override, I mean, there's any number of 10 ways that -- that -- or there are a number of 11 technologies that you could call advance 12 services. I don't know that -- that we would 13 limit it or had anything -- I mean, there's not 14 anything specific in mind there that would -- 15 you know, I'm not trying to limit it to 16 anything. We may provide any number of services 17 that become available in the future. 18 Q. Okay. Do you have any knowledge 19 whatsoever of any instance in which NuVox has 20 been prohibited from deploying or providing an 21 advance service, however you interpret that 22 phrase, as a result of bridged taps? 23 A. I don't have any -- I can't recall any 24 specific instance of that. 25 Q. Okay. Are you aware of any state or</p>
<p style="text-align: right;">Page 75</p> <p>1 discussed earlier. At this time, we order 2 the -- the electronics are BellSouth's 3 electronics, but that doesn't mean that that's 4 what we -- you know, if it's an unbundled copper 5 loop, we can -- we put our own electronics on 6 it, so. 7 Q. You're talking above my head. What 8 I'm really looking for is you said that you're 9 currently offering advance services on copper 10 loop and that you plan to offer more in the 11 future. 12 A. Continue to. Correct. That's right. 13 Q. So what services are you providing 14 on -- what advance services are you providing on 15 copper loops today? 16 A. All the services that we mention here. 17 Q. Those are all considered advance 18 services, and you're referring to Exhibit 3? 19 A. I mean, obviously, not. I don't know 20 that Dialup Internet necessarily would be 21 provided that way, but, you know, I think all of 22 the services that we offer are made available 23 using those loops. And those are -- those 24 are -- I mean, yes, we consider that to be 25 advance services, right.</p>	<p style="text-align: right;">Page 77</p> <p>1 federal definition for advance services? 2 A. No. I mean, I'm sure they're out 3 there. I couldn't spit one out to you, no. 4 Q. Are you testifying about the TIC 5 charge, is that your issue? 6 A. Yes. 7 Q. What is your understanding of what the 8 TIC charge is? 9 A. Let me find that in my testimony. 10 Q. Sure. I believe it's Issue 65? 11 A. Yep. Do you have a page number? I'll 12 find it. 13 Q. Sure. 14 MR. CAMPEN: 87? 15 A. Okay. Can I get you to repeat it, 16 please? Repeat the question, please? 17 Q. What is your understanding of what 18 this charge is for? 19 A. I think my understanding of this 20 charge is based pretty much on what we've heard 21 from BellSouth witnesses. I don't know that I 22 really do completely understand what it's for. I 23 mean, we've been told that it was for, I think, 24 administrative purposes. We're saying that it 25 is additive. It's not TELRIC based. It didn't</p>

<p style="text-align: right;">Page 78</p> <p>1 exist up until recently. So our understanding 2 of that charge is probably more incomplete than 3 it should be. 4 Q. Do you have an understanding of what 5 service is being provided by BellSouth, it is 6 trying to recover through the TIC? 7 A. No. I mean, we assume that it's 8 related to the transit service. 9 Q. Do you provide transit services? I 10 don't mean, you. I mean NuVox. 11 A. Does NuVox provide? 12 Q. Yeah. 13 A. Our switch can perform tandem 14 functions. And we do transit traffic, but 15 it's -- I mean, it's our traffic that goes, you 16 know, we carry it for our customers, handing it 17 off to their long distance carriers or other 18 carriers. I don't know if that fits the exact 19 definition of transit in the way that BellSouth 20 transited it because that's three parties. 21 Q. Okay. If you go through BellSouth, 22 what is your understanding of -- 23 A. I would say we -- our transactions are 24 always going -- it's going to be a two-party 25 transaction not a three-party transaction. You</p>	<p style="text-align: right;">Page 80</p> <p>1 function for -- for our customer who's calling, 2 you know, it's a local call to another carrier, 3 you know, an dependent company or another CLEC 4 or even long distance carriers. I mean, there 5 are cases where those calls are transited to a 6 long distance carrier as well, so. 7 Q. Let's see if we can play this out. 8 Your end user makes a phone call to a KMC end 9 user. 10 A. Uh-huh. 11 Q. In that situation, would BellSouth be 12 performing transit function for a local call? 13 A. Yeah, if it's a local call. Yes. 14 Q. Would it be possible for you to 15 directly interconnect with KMC so that you can 16 avoid BellSouth? 17 A. Sure, it's possible. 18 Q. Now, if it's a long distance call, 19 your end user is calling a Qwest end user in 20 Denver and your LPIC -- your customer's LPIC is 21 AT&T -- 22 A. Uh-huh. 23 Q. -- would BellSouth be providing 24 transit track -- transit function for NuVox in 25 that instance?</p>
<p style="text-align: right;">Page 79</p> <p>1 know, we carry in a call for our customer, it 2 goes to a -- to another party. 3 Q. So, for instance, if you have a 4 business customer, you will transit his or its 5 traffic directly to the AT&T POP for long 6 distance? 7 A. We can interconnect. We interconnect 8 to -- 9 Q. Oh, you do? 10 A. -- carriers. 11 Q. Okay. Which carriers have you entered 12 into interconnection? 13 A. I mean, there are a number of them. I 14 don't know all them. I think like Qwest, AT&T, 15 a number of major carriers. 16 Q. Do you know if BellSouth even provides 17 a transit function for NuVox? 18 A. I know that you do. 19 Q. In what circumstances would BellSouth 20 be performing a transit function rather than you 21 doing it directly with the other carrier? 22 A. I may be a little bit -- little 23 confused about the question. 24 Q. Would you like me to rephrase it? 25 A. Well, BellSouth performs a transit</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Gosh, I've been away from this a long 2 time. Yeah. If it's on an outbound call. 3 You're talking about an outbound call? 4 Q. Yeah, your end user is originator? 5 A. From my user, yes, you could. I think 6 it could. I don't think it's always necessarily 7 so -- 8 Q. When -- I'm sorry? 9 A. -- but it is -- and I'm not sure if 10 you're asking me when that would happen, there 11 are kind of -- there's a lot of things that go 12 into routing decisions and how calls are routed 13 that are, you know, based on contracts and 14 agreements and a number of other things with 15 BellSouth and other carriers as to how we're 16 going to route and which routes are least cost, 17 that kind of thing. 18 Q. And that instance, a NuVox end user 19 making a long distance call via AT&T to a Qwest 20 end user in Denver, would it be possible for you 21 to direct connect with the AT&T switch rather 22 than going through BellSouth? 23 A. Yes, that's possible. 24 Q. In fact, in some situations you 25 actually do direct connect, I guess you call</p>

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1 is providing that's at in Issue 63 is not
2 already recovered in a TELRIC price, is it your
3 position that BellSouth should just forgo that
4 price and that charge?

5 A. It's our position that it's -- yes,
6 that BellSouth should forgo that charge until
7 such evidence would be presented and a TELRIC
8 rate and price developed for that for whatever
9 that charge is meant to recover.

10 Q. This sentence that we just read, who
11 wrote that?

12 A. That was written through consultation
13 with our counsel and all the other Petitioners.

14 Q. Do you know specifically whose
15 creation that is?

16 A. I really don't. I can't attribute it
17 to a specific person.

18 Q. One last question.

19 A. Sure.

20 Q. Is a TIC an insect? I'm joking.
21 I'm done.

22 (Signature reserved.)
23 (The deposition concluded at 2:20 p.m.)
24
25

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ERRATA SHEET

1
2

Case name: In the Matter of

3 Joint Petition NewSouth

 Communications Corp., et al. for

4 Arbitration with BellSouth

 Telecommunications, Inc.

5
6

Deponent: JOHN FURY

8 Date: December 14, 2004

9

10	PAGE	LINE	READS	SHOULD READ
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SIGNATURE

1
2
3 I, JOHN FURY, do hereby state under oath that I
4 have read the above and foregoing deposition in
5 its entirety and that the same is a full, true
6 and correct transcript of my testimony
7 Signature is subject to corrections on attached
8 errata sheet, if any
9
10
11
12
13
14

15
16 JOHN FURY

17 State of _____

18 County of _____

19 Sworn to and subscribed before me this
20 _____ day of _____, 2005
21
22
23
24
25

26 Notary Public

27 My commission expires. _____

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CERTIFICATE

1 State of North Carolina
2 County of Wake
3
4 I, Sarah K. Mills, a notary public in and for
5 the State of North Carolina, do hereby certify
6 that there came before me on the 14th day of
7 December, 2004, the person hereinbefore named,
8 who was by me duly sworn to testify to the truth
9 and nothing but the truth of his knowledge
10 concerning the matters in controversy in this
11 cause, that the witness was thereupon examined
12 under oath, the examination reduced to
13 typewriting by myself, and the deposition is a
14 true and accurate transcription of the testimony
15 given by the witness
16 I further certify that I am not counsel for, nor
17 in the employment of any of the parties to this
18 action, that I am not related by blood or
19 marriage to any of the parties, nor am I
20 interested, either directly or indirectly, in
21 the results of this action
22
23
24
25

26 In witness whereof, I have hereto set my hand
27 and affixed my official notarial seal, this the
28 27th day of December, 2004

29
30
31 Sarah K. Mills
32 Notary Public
33 My commission expires 11/16/08
34
35

23 (Pages 86 to 87)

<p>A</p> <p>ability 35 7 48 8 54 16 54 22 55.3 67 8 70.9 72.6,18</p> <p>able 30 20 34.14 35.11 36 21 45.2 72 9</p> <p>above-entitled 1.15 4.9</p> <p>absence 64:6</p> <p>absolute 70 11</p> <p>absolutely 17 21,21 32.2 55 25 70.25</p> <p>accept 38 4,10 54:12</p> <p>access 22:13 23.3 26.24 27 5,8 28.21,24 31 2 36 15 45.10</p> <p>accommodate 6.1</p> <p>account 9 6,6</p> <p>accurate 6 25 37 7 63 11 65 24 70.14 87 8</p> <p>accurately 5 24</p> <p>ACNAs 11 1</p> <p>acquisition 12 10,15</p> <p>acquisitions 11 9</p> <p>action 1 15 4 9 87-11 87 12</p> <p>activity 8 24</p> <p>actual 37 4 40 6,14 68 25</p> <p>Adams 1 19 2 4</p> <p>add 9 20</p> <p>added 7.24 9:19 35 2</p> <p>adding 26.3</p> <p>additional 51 24</p> <p>additive 77 25 82.14 83 1,23</p> <p>adds 50 8</p> <p>administrative 77 24</p> <p>ADSL 29 4,16,18,23,23 30 9 31 13</p> <p>advance 70 4 71 9 73 4 73.10,24 74.3,17 75 9,14,17,25 76.2,4 76.5,8,11,21 77 1</p> <p>advanced 70.10 72 10 73 18</p> <p>advice 18 10</p> <p>affixed 87 14</p> <p>afternoon 73 21</p> <p>agree 25 5,7 27.9 33.21 34.5,8,10,21 51:17 53.7,11 67 19,20,21 67 25 71.23 82 19</p> <p>agreed 6.6 43 20 51-9 51.11 58 12 73.16</p>	<p>agreeing 66.4</p> <p>agreement 9.19 28.16 33.5 46.17 51 12 57.21 58.2 59:16 63 18</p> <p>agreements 8.19 58:14 81.14</p> <p>ahead 15.23 24.2,3</p> <p>al 1.7 85:3</p> <p>allow 6 2 39 14</p> <p>allowing 6:4</p> <p>allows 67:7</p> <p>amount 48:17</p> <p>analysis 41:17,23 42.2</p> <p>answer 6.5 8 6 10 20 17 17 18:19 22.23 23 7,10 27 25 28 7 31 17 32.9 62.11,12 74.8,10,11</p> <p>answered 74 5,6,15</p> <p>answering 6.3</p> <p>answers 4:17</p> <p>apologize 26 12 67 3</p> <p>APPEARANCES 2:1</p> <p>appears 82 14</p> <p>application 69:25 71 5 71 15</p> <p>appreciate 18 19</p> <p>appropriately 82 12</p> <p>arbitration 1.8 5 13 10:5 11 4 16.9,25 85:4</p> <p>arbitrations 15:6</p> <p>areas 7:10 8 18</p> <p>arises 50 24</p> <p>arose 40 12</p> <p>arrive 14 3</p> <p>arrived 13:18 17 10</p> <p>articulated 60 20</p> <p>asked 4.22 20 10 60 19 69 8 74 5 83.14</p> <p>asking 5 18,18 6 5 17:7 37 25 38 1 59 15 66 19,21 67.4,14,15 81 10</p> <p>aspect 46.5 68 5</p> <p>aspects 7.22 20.19 40.9</p> <p>asserting 38.15 54.4 72.7</p> <p>assist 47 7</p> <p>assume 78.7</p> <p>assuming 83.19</p> <p>assumption 54.23 69.17 83:12</p> <p>Atlanta 2.15</p>	<p>attached 86 5</p> <p>Attachment 3.12 33 15</p> <p>attack 35 24</p> <p>attenuation 48.18</p> <p>attribute 84.16</p> <p>AT&T 79.5,14 80.21 81.19,21</p> <p>authority 6.17</p> <p>available 22:13 23 3 24 21 28 15 45 23 73.24,25 74 1 75:22 76.17</p> <p>avoid 80 16</p> <p>aware 39.3,6 76.25</p> <p>a.m 1.21</p> <p>B</p> <p>B 50:17</p> <p>back 48 12 51 16 56 19 56 20</p> <p>background 7.8 8.9 19 21 20 23</p> <p>bandwidth 26 20 27:15 27 16 48.17</p> <p>bandwidths 43 15,16 43 16</p> <p>base 61.21</p> <p>based 21 8 37 4 40 4,5 40.7,11,14,16,19 44:10,12 46.15 61 24 77.20,25 81:13 83 13</p> <p>basis 65.2 82 24 83 10</p> <p>basket 83 20</p> <p>bear 8 10</p> <p>beginning 1:21</p> <p>behalf 2 3,11 6 11 47.8</p> <p>belief 37 5</p> <p>believe 10 9 16 10,13 17 2 26.23 37 9,12 37 13,16 38 13 39:8 40 25 41 1 42.8 43 10 44 8 51.12,19 54.4,18,19 59:8 60 13,14,19 70 18 72 4,4 77 10 82 21 82 25 83 2,6</p> <p>believes 37 13</p> <p>Bell 39.7</p> <p>BellSouth 1.8 2 11,13 5.11 8 18 9.14 11:10 11.18 12.1,22 20:11 20 16 21 4,9,25 23 21 25 14 26 22 27:23 28 4,14 30 22 30 25 34 17,20,22</p>	<p>35 17 36.4,11,23 38 16 39 21 42:5,9 49.19 51.2,6,8,9,13 51.17,19 52 8,11 53 7 54 14,18,19 55 16 57 20 58 1,21 59 4,10,19 60.22 61.3 66 14,21 67 4 67.22 69 8 77.21 78:5,19,21 79 16,19 79.25 80.11,16,23 81:15,22 82.11 83.5 83 13,15,25 84 3,6 85.4</p> <p>BellSouth's 19 23,25 31:3 38.25 41:19 52.25 59 13 61 2,22 62.16 68 21 75.2</p> <p>benefit 47:25</p> <p>Bennie 44.21</p> <p>Bernstein 1.19 2.4</p> <p>best 6 14 16.14</p> <p>better 23 7 51 22</p> <p>billed 56 14</p> <p>bind 6 17</p> <p>binds 63 13</p> <p>bit 51 17 79 22</p> <p>blood 87.11</p> <p>Bo 9.17</p> <p>boss 12.4</p> <p>break 5.25 21.11 35.23 49 11,12</p> <p>bridged 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<p style="text-align: right;">Page 114</p> <p>1 negotiate and arbitrate under the final 2 rules, then they don't automatically go 3 into effect. It's never been done that 4 way. It's not done that way in the Act. 5 The FCC has always encouraged 6 negotiation. 7 I mean, the state commissions 8 don't have the resources to arbitrate 9 issues that the parties could find and 10 negotiate a resolution to. 11 Q. Do you see any inconsistency in your 12 opinion? 13 A. No. 14 Q. I'm not surprised. 15 A. I will need a break in 10 or 15 minutes. 16 MR. MEZA: Okay. Why don't we 17 break now. 18 THE WITNESS: Okay. Good. 19 MR. MEZA: My intention is to go 20 to 5:30. So if we break now, that will 21 give us time for the home stretch. 22 MR. CAMPEN: That's fine. 23 (DEPOSITION EXHIBIT NO. 16 WAS MARKED.) 24 (RECESS.) 25 BY MR. MEZA:</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Yes. 2 Q. Okay. And you see a voice frequency 3 analog line coming from that NID into a 4 line card at a DLC. Do you see that? 5 A. Okay. 6 Q. Do you accept that, that that's what this 7 picture represents, at least -- 8 A. Yes. 9 Q. -- as far as we've got -- 10 A. Yes. 11 Q. All right. And at the DLC, the voice 12 frequency line, the 24 voice frequency 13 lines are mux-ed up to a DS-1. Do you see 14 that? 15 A. Okay. 16 Q. Do you accept that? 17 A. Yes. 18 Q. Okay. And this is all on the outside 19 plant? 20 A. Uh-huh. 21 Q. Do you accept that? 22 A. Yes. 23 Q. All right. And then it goes into the 24 BellSouth's central office into a DLC and 25 then to the main distribution frame where</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. Mr. Falvey, to your right is a new exhibit 2 that I'd like for you to look at. 3 A. Okay. 4 Q. It's Exhibit 16. And I can't take 5 ownership of it since it was prepared for 6 me, but I'd like to walk you through it. 7 And it relates to the issue of what rate 8 should mux-ing be charged. 9 A. Okay. 10 Q. All right? 11 First, what is your position on 12 this issue? 13 A. Well, we believe that multiplexing should 14 be a TELRIC-priced element, as it has been 15 in the past. 16 Q. Let me see if you and I can agree on this 17 chart, see if we can sort of put this 18 issue into perspective. 19 Starting on the right-hand side, 20 you see the customer premises and the NID? 21 A. Yes. 22 Q. Which stands for network interface device; 23 is that right? 24 A. Okay. 25 Q. Do you accept that?</p>	<p style="text-align: right;">Page 117</p> <p>1 it's mux-ed down to VF, which means a 2 voice frequency line. And then a CFA or 3 connecting facility assignment that you 4 would purchase from BellSouth brings it to 5 your collocation space where it's 6 multiplexed again to a DS-1 or DS-3. 7 A. Okay. 8 Q. Do you accept that -- 9 A. Yes. 10 Q. -- that description? 11 A. Yes. 12 Q. What multiplexing service is Xspedius 13 requesting to be priced at TELRIC as it's 14 set forth in this diagram? 15 A. The multiplexor in the CLEC collocation 16 space. 17 Q. And why do you believe that -- why do you 18 believe that that should be at TELRIC? 19 A. Well, it's part of your network and it's 20 currently subject to unbundling 21 obligations, and we see no reason why that 22 would change going forward. 23 Q. Would you accept the definition of a loop 24 as being defined as the loop -- well, as 25 existing between the main distribution</p>

<p style="text-align: right;">Page 110</p> <p>1 A I have some record of that from the -- 2 our attorneys. 3 Q So you have a log? 4 A. I don't know if we had a log per se -- 5 yeah, I mean, at one point -- when we 6 filed for arbitration, we had a log. 7 Prior to that, notes, yeah -- mostly 8 notes, e-mails, that kind of thing. 9 Q So you know every -- or you have an idea 10 of every instance where the parties agreed 11 to something other than what's required by 12 law? 13 A We have some record of it. Prior to the 14 arbitration, it's everybody's notes, so 15 it's not, you know... 16 Q. And so is it your intention with this 17 issue to provide yourself with an 18 opportunity to reargue or to get back what 19 you may have compromised? 20 A No. 21 Q. So for those issues to which the parties 22 have agreed to something other than the 23 law, it's not your intention with issue 12 24 to leave yourself a window of opportunity 25 to argue that something -- that the law</p>	<p style="text-align: right;">Page 112</p> <p>1 but the new one hasn't been arbitrated. 2 I'm not going to say categorically that 3 state unbundling rules would never come 4 into a play just because we've entered 5 into an interconnection agreement. 6 And I've given you some examples 7 in New York and Pennsylvania where, no 8 question, you can take advantage of state 9 tariffs, even if you're in an 10 interconnection agreement. 11 Q. Do you believe that the agreement should 12 encompass all applicable law in existence 13 at the time of contracting? 14 A. Well, I would make the following 15 distinction. If, for example, the final 16 rules have just come out, then -- and 17 we're negotiating actively through 18 whatever process or arbitrating and it's 19 very clear that certain affective FCC 20 orders have not -- are very actively 21 being reduced to writing, then, no, the 22 FCC order would not become automatically 23 part of the agreement. 24 Q. But existing state unbundling laws could 25 be?</p>
<p style="text-align: right;">Page 111</p> <p>1 applies for those specific revisions? 2 A No, because it says unless otherwise 3 specifically agreed to by the parties, and 4 the issue -- in the explanation itself, 5 it says, should the agreement explicitly 6 state that all existing -- unless 7 otherwise specifically agreed to by the 8 parties. 9 So if the Louisiana rules say that 10 it should be black and we agree that it 11 should be white, I'd be hard pressed to 12 take advantage of the rule. Right? 13 Q. What if -- 14 A But, I mean, if -- Right now, if the final 15 rules didn't come out -- didn't go into 16 effect, we would need those -- some of 17 these state rules and statutes to ensure 18 that unbundling continues until the FCC 19 catches up. So there certainly are 20 circumstances you could envision, 21 circumstances -- and God knows the law 22 changes every two weeks at the FCC, but we 23 could envision circumstances where we 24 might have to fall back to the rules. 25 Maybe the contract expires, for example,</p>	<p style="text-align: right;">Page 113</p> <p>1 A. If we're not negotiating on it, right 2 Yeah. I mean, if it's not open to active 3 change of law negotiations and 4 arbitrations, then, yeah, it could be, as 5 a gap filler. 6 Q. Even though the parties are silent about 7 its application? 8 A. Yeah. I mean, ultimately it's up to the 9 commission; right? If I file a complaint, 10 the commission wants to enforce its rules, 11 it's going to enforce its rules. 12 Q. So what you're telling me is you're 13 willing -- it's your interpretation that 14 silence as to application of state 15 unbundling rules means that those rules 16 are applicable to this contract, but that 17 the FCC's final rules, to the extent 18 they're still negotiating -- being 19 negotiated at the time of execution, would 20 not be applicable? 21 A. Actually, what I said as to the state 22 unbundling rules is that you have to get 23 into the specifics of which rule are you 24 talking about, okay. But it's very clear 25 to me that if we don't have time to</p>

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<p>1 direct conflict.</p> <p>2 Like if we did a trade off, some</p> <p>3 horse trading, and we said, well, you</p> <p>4 don't have to unbundle loops as long as</p> <p>5 you unbundle transport, again,</p> <p>6 hypothetically. And we did a deal that</p> <p>7 says, no loops, but give me transport</p> <p>8 And there's a Louisiana law, rule that</p> <p>9 says you have to unbundle both, well,</p> <p>10 then, that would be one situation.</p> <p>11 But just because I'm doing this</p> <p>12 contract doesn't mean I'm waiving all of</p> <p>13 the unbundling rules that the state of</p> <p>14 Louisiana, including our local counsel,</p> <p>15 took great time and effort to put into</p> <p>16 place for good purpose.</p> <p>17 Q. Do you think -- Let's take Louisiana. Do</p> <p>18 you think that BellSouth is obligated to</p> <p>19 provide or to comply with those unbundling</p> <p>20 rules absent a state contract?</p> <p>21 A I think that -- okay, absent a state</p> <p>22 contract, are you -- I don't know I'd</p> <p>23 have to look at the rules.</p> <p>24 Q And my simple question is this, is it your</p> <p>25 intention with this provision saying that</p>	<p>1 every word of the FCC's orders to writing</p> <p>2 in your agreement, then you must have</p> <p>3 meant to waive any section that you didn't</p> <p>4 explicitly reduce to writing.</p> <p>5 And I think this is really just a</p> <p>6 place holder to say, on the contrary, we</p> <p>7 are, for the most part, where we have</p> <p>8 rights under federal orders and federal</p> <p>9 rules, we're trying to reduce all of it</p> <p>10 to writing -- doing our best to reduce it</p> <p>11 to writing. Now, we may make some</p> <p>12 compromises along the way and there may be</p> <p>13 some explicit distinctions between what's</p> <p>14 in the contract versus what's in an</p> <p>15 order. But you can't say, ha, ha, you</p> <p>16 didn't put this or that audit provision</p> <p>17 into the contract; therefore, you must not</p> <p>18 have meant to include it in the contract.</p> <p>19 In some sense, if you don't have</p> <p>20 this, then maybe we do need to attach</p> <p>21 every order that's come out in the last</p> <p>22 ten years as an attachment to the</p> <p>23 contract. I mean, I'm not sure where you</p> <p>24 go if BellSouth takes the position that</p> <p>25 it's taking and it prevails. The rest of</p>
	Page 109
<p>1 the parties comply with all applicable law</p> <p>2 to sue BellSouth, for instance, for breach</p> <p>3 of contract for not complying with state</p> <p>4 unbundling laws that are not referenced in</p> <p>5 the agreement?</p> <p>6 A. Which provision, when you say this</p> <p>7 provision about applicable law?</p> <p>8 Q I'm sorry, issue 12.</p> <p>9 A Issue 12.</p> <p>10 MR. CAMPEN: That would be G,</p> <p>11 section G?</p> <p>12 MR. MEZA: Yeah</p> <p>13 MR. CAMPEN: Yeah.</p> <p>14 MR MEZA: Let me see if I can get</p> <p>15 it.</p> <p>16 Q. Look around page 47.</p> <p>17 A. Okay. Page 47 of the direct. Where's the</p> <p>18 issue statement that's --</p> <p>19 Q. It starts on 44.</p> <p>20 A. I don't have any hidden intentions about</p> <p>21 some secret game plan about what we're</p> <p>22 going to pursue. I think that the genesis</p> <p>23 of this provision was an argument that</p> <p>24 BellSouth made in a state proceeding that</p> <p>25 said that if you didn't essentially reduce</p>	<p>1 the contract's inadequate.</p> <p>2 Q. So what's the answer to my question?</p> <p>3 A. What was your question?</p> <p>4 Q Are you intending to use this provision to</p> <p>5 somehow --</p> <p>6 A. No. I -- Right up front I said, I don't</p> <p>7 have any secret agenda here.</p> <p>8 Q. Could it be argued that this provision</p> <p>9 would allow you to do what I've described?</p> <p>10 A. I certainly can do it in New York and</p> <p>11 Pennsylvania when we used to operate</p> <p>12 there. We don't even operate in those</p> <p>13 states anymore. But it depends state by</p> <p>14 state on -- and if you gave me some</p> <p>15 specific examples, I'd be more than happy</p> <p>16 to respond.</p> <p>17 Q. Specific examples of what?</p> <p>18 A Of a circumstance where, here's a</p> <p>19 provision in the contract and here's a</p> <p>20 rule. By signing this provision in the</p> <p>21 contract, do you intend to waive your</p> <p>22 rights to enforce these rules?</p> <p>23 Q. Is it your -- Do you know every instance</p> <p>24 where the parties compromised on what the</p> <p>25 law is?</p>

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<p>1 conceivable to me -- but the short answer</p> <p>2 is we might -- we might want to rely upon</p> <p>3 them to get something into the agreement,</p> <p>4 but they are not part of the agreement per</p> <p>5 se.</p> <p>6 Q. And if they're not part of the agreement</p> <p>7 per se, is it your opinion they don't</p> <p>8 apply as -- as -- or that BellSouth is</p> <p>9 not obligated by them pursuant --</p> <p>10 A. No, we're not waiving anything, no, by no</p> <p>11 means I mean, there's all sorts of law</p> <p>12 out there, whether it relates to</p> <p>13 unbundling or, you know, EEL audits. You</p> <p>14 know, whatever the issue, there's a lot of</p> <p>15 law out there and we believe, you know,</p> <p>16 the applicable law isn't changed by this</p> <p>17 contract.</p> <p>18 Q So whatever -- regardless of what the</p> <p>19 parties say in the contract, the parties</p> <p>20 are still governed by whatever the</p> <p>21 applicable law is?</p> <p>22 A. No. If there's specific, explicit</p> <p>23 provisions in the contract on a particular</p> <p>24 point, then that -- that rules, that</p> <p>25 governs.</p>	<p>1 unbundling laws apply --</p> <p>2 A. Okay.</p> <p>3 Q. -- to BellSouth's obligations to provide</p> <p>4 service to you; okay?</p> <p>5 A. Okay.</p> <p>6 Q. Is it your position that, as a result of</p> <p>7 that silence, those laws are applicable</p> <p>8 and incorporated into --</p> <p>9 A. I'd say they're not waived.</p> <p>10 Q. What does that mean? Could you sue</p> <p>11 BellSouth on a breach of contract for not</p> <p>12 complying --</p> <p>13 A. Not for breach of contract but for a</p> <p>14 violation of the rules. Right? I mean,</p> <p>15 there's all sorts of FCC rules. We do</p> <p>16 that all the time We file complaints for</p> <p>17 a violation of the FCC's rules. I have</p> <p>18 two complaints on file right now, one</p> <p>19 against Qwest, one against Verizon. I</p> <p>20 have contracts with all of them, but I'm</p> <p>21 not giving up the rules, for crying out</p> <p>22 loud.</p> <p>23 Q. So if they don't give rise to your breach</p> <p>24 of contract action, why would you</p> <p>25 incorporate them into the agreement?</p>
Page 103	Page 105
<p>1 I mean, truthfully, the</p> <p>2 hypothetical, you can't proceed by</p> <p>3 hypotheticals, because the answer might be</p> <p>4 different in New York or Pennsylvania than</p> <p>5 in --</p> <p>6 Q. I don't care about New York or</p> <p>7 Pennsylvania. So what --</p> <p>8 A. Or Louisiana. It might be different in</p> <p>9 Atlanta than it is in New Orleans, okay,</p> <p>10 different in Raleigh than it is in</p> <p>11 Louisville, okay. And it'll depend on the</p> <p>12 particular provisions and particular</p> <p>13 circumstances.</p> <p>14 But as to the general body of law,</p> <p>15 common law that's out there that's</p> <p>16 generally not addressed in this contract,</p> <p>17 that's going to be -- that's going to</p> <p>18 continue on, regardless of the fact that</p> <p>19 we entered into a fairly -- fairly</p> <p>20 specialized telecommunications contract.</p> <p>21 Q. Well, let me make sure I understand your</p> <p>22 position You may not like the</p> <p>23 hypothetical, but I'll try to again</p> <p>24 Presume with me that this contract</p> <p>25 is silent as to whether or not state</p>	<p>1 A. I don't understand the question.</p> <p>2 Q. Let me try again If the contract is</p> <p>3 silent as to a particular application of</p> <p>4 law, is it your position that whatever the</p> <p>5 law is is somehow incorporated into this</p> <p>6 agreement?</p> <p>7 A Yeah. I mean, in terms of basic contract</p> <p>8 law, like, you know, Farnsworth contract</p> <p>9 book law, I mean, that's all still out</p> <p>10 there, tort law, you know. For the most</p> <p>11 part, it's all still out there</p> <p>12 Q. And if my hypothetical would state</p> <p>13 unbundling laws, would it be your position</p> <p>14 that, because the contract is silent as to</p> <p>15 their application, do they apply or are</p> <p>16 they incorporated into this</p> <p>17 interconnection agreement?</p> <p>18 A. And, again -- I'm going to state this</p> <p>19 again, when it comes to a question about</p> <p>20 state unbundling laws, I can't answer that</p> <p>21 broad of a question, unless you tell me</p> <p>22 what state you're in --</p> <p>23 Q New York --</p> <p>24 A. -- what rule you're talking about, and</p> <p>25 whether that rule, for example, is in</p>

27 (Pages 102 to 105)

<p style="text-align: right;">Page 98</p> <p>1 a court of law first, whereas the 2 remaining eight states believe that you 3 have to submit the dispute to the 4 commission first, is it your 5 interpretation of the law that a decision 6 from a court as to that one state that 7 allows you to go to a court first is 8 binding upon the eight other states? 9 A You have it backwards. You don't go to 10 the commission to ask whether you can go 11 to the court. You file in federal court, 12 and then the court would determine whether 13 the commission has primary jurisdiction. 14 Q I don't think I have it backwards. You 15 may have the question backwards. 16 A. Okay. 17 Q So let me try again 18 You have one state commission that 19 says, as a result of this arbitration 20 proceeding, Xspedius, you have the option 21 of going to a court of law. 22 A. Now, I understand where you -- okay, I 23 understand where you're going. Continue. 24 Q. One state says, you can go to a court 25 first.</p>	<p style="text-align: right;">Page 100</p> <p>1 with jurisdiction, was the only 2 limitation. 3 Q. And I believe you testified already that 4 you're not aware of any instance in which 5 Xspedius has sued BellSouth in a court? 6 A No. And, of course, it makes me wonder if 7 those many complaints before weren't filed 8 under the first agreement, but I -- off 9 the top of my head, no, but it's always 10 been an option, and I like that, given the 11 expense -- litigation expense we've had 12 over the years. 13 Q Are you aware of any applicable law or 14 regulation that is not identified, 15 referred to, or addressed in the 16 interconnection agreement that you believe 17 should be in the interconnection 18 agreement? 19 A. I think that what's currently agreed to in 20 the agreement is -- you know, is where we 21 want to be, but I can think of about 30 22 issues that we'd like to see in the 23 agreement that are not yet in the 24 agreement. 25 Q. All right. Let's -- Let me give you a</p>
<p style="text-align: right;">Page 99</p> <p>1 A. Yes. 2 Q Eight others say, no, you have to come to 3 the state commission to resolve disputes. 4 A. Got it. 5 Q. Okay So you file in district court in 6 the state in which the -- you know, let's 7 say it's Alabama. Alabama says you can 8 file in court. Is it your opinion that 9 the Alabama court's decision is binding on 10 the other eight states? 11 A I would say that if he's reading the same 12 contract on a dispute that it would be 13 very strong precedent and certainly cite 14 to it 15 Q. Would that court decision obviate your 16 need to litigate with the commission in 17 eight other states? 18 A. Not if we only won in one state. I mean, 19 the agreement we have -- we had before it 20 expired, and we opted into the NuVox 21 agreement, allowed us to go to any forum. 22 It said -- And it was a negotiated 23 provision. It wasn't arbitrated. 24 BellSouth voluntarily agreed that the 25 parties could take any claim to any forum</p>	<p style="text-align: right;">Page 101</p> <p>1 hypothetical. 2 A. Uh-huh. 3 Q. This agreement -- 4 A. I mean, yes. 5 Q. This agreement is silent as to the 6 application of state unbundling laws, 7 doesn't address it. 8 A. Hypothetically. 9 Q. Okay, hypothetically. Is it your opinion 10 that those laws are applicable to this 11 contract and are incorporated into the 12 contract? 13 A They're not incorporated into the 14 contract, but one could resort to them in 15 some circumstances. For example, in New 16 York and Pennsylvania, there were always 17 tariffs on file. The 214, 216, 914, 916; 18 200 series are in New York and 900 series 19 are in Pennsylvania. And you could always 20 buy an EEL out of that tariff. Even if 21 you had an interconnection agreement, 22 there was a floor 271 based where you 23 could go buy an EEL out of those tariffs. 24 Similarly, there's unbundling 25 rules in the state of Louisiana, and it's</p>

26 (Pages 98 to 101)

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1 district court. BellSouth appealed in
2 Georgia to the district court. We won in
3 the AAA arbitration. We kept winning.
4 Every single one of these victories was
5 100 cents on the dollar plus charges past
6 due So, I mean, if you can imagine the
7 dollars that we had to put out for all of
8 that litigation, that's the experience
9 that we've had.
10 And so when we come to an
11 opportunity to collect 67 cents or less on
12 the dollar today versus that kind of a
13 protractive litigation campaign -- and by
14 the way, I could tell you the same story,
15 and if it makes you feel any better,
16 Swivet it did it to us, too. We had to
17 file in Texas. We had to file in
18 Missouri We had to file in Oklahoma. We
19 had to file in Kansas. We had to file in
20 Arkansas. We had to litigate all five of
21 those. Halfway through the process, we
22 did another partial settlement because the
23 dominant provider bleeds the new entrance
24 dry It's that simple Forces you to
25 take a settlement of less than you would

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1 be entitled to if you proceeded.
2 Q. In the BellSouth instance that you're
3 referring to, you mentioned --
4 A I have more stories, but I'll leave them
5 for another day.
6 Q You referenced a commercial arbitration
7 proceeding in addition to commission
8 proceeding; is that right?
9 A. Correct.
10 Q. For the same dispute?
11 A. Yes.
12 Q. Why did you bring the dispute in a
13 commercial arbitration context for three
14 states?
15 A Those types of decisions are made in
16 consultation with our attorneys. And --
17 For one thing -- I mean, I'm not even
18 going to go into it because I don't want
19 to start down that road and say I'll tell
20 you one reason but I won't tell you the
21 other. I'm not going to tell you -- I'm
22 not comfortable telling you anything about
23 those types of choice of forum decisions
24 Q So you voluntarily chose to go to AAA in
25 some states and to the state commission in

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1 others?
2 A. Oh, yes. Reduced -- if you count them up,
3 right, Georgia, Florida, three state, and
4 Kentucky -- one, two, three, four -- took
5 us at least from six complaints down to
6 four, so that was good.
7 Q. Did you have the option of going to a
8 court of law?
9 A. I can't remember under that contract.
10 Under the second generation contract --
11 we've done three that were true East Buyer
12 contracts. It's actually ACSI, East Buyer
13 and Xspedius. But, anyway, under our --
14 the second one we did, we had a right to
15 go to a court of law.
16 Q. And then --
17 A. I don't believe we did have such a right
18 when -- in the first contract.
19 Q. And the settlement you're referring to, 67
20 cents on the dollar, that is in relation
21 to the first contract?
22 A. No. We got much more than that, because
23 we had engaged in all of that litigation
24 So I'm referring to the one that was
25 earlier this year. It was less than that,

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1 less than 67 cents on the dollar.
2 Q. The dispute where you filed in the state
3 commissions and with AAA --
4 A. Uh-huh
5 Q. -- what company was that?
6 A. I can't remember whether it was ACSI or
7 East Buyer.
8 Q. And so either one, it's either the first
9 generation contract or the second
10 generation contract?
11 A. Yes.
12 Q. And it's your understanding that in the
13 second generation East Buyer contract, you
14 had the ability to go to a court of law?
15 A. My general recollection is that we didn't
16 have a choice of consolidating them all in
17 one court of law, but I'd have to go back
18 and look at all of the filing dates and so
19 on.
20 Q. Would you agree with me that there is a
21 risk that not every state commission will
22 accept your position as to this issue?
23 A. Yes.
24 Q. And if that happens, and let's say, for
25 instance, one state believes you can go to

<p style="text-align: right;">Page 90</p> <p>1 tariff was not rejected. It was accepted 2 by the commission. It was never closely 3 inspected. Allowing a tariff to go into 4 effect does not bless each and every line 5 item of that tariff. 6 Q Are you aware of any instance where an 7 Xspedius tariff provision relating to 8 limitations of liability or 9 indemnification has been rejected by a 10 court of law? 11 A. No 12 Q. Do you agree with me that the limitation 13 of liability language that you're 14 proposing applies to the negligent actions 15 of either party? 16 A Yes. 17 Q In 10.5 of your proposed language, you 18 are -- you have included indemnification 19 for the actions of a party that constitute 20 negligence. Do you see that? 21 A We've included indemnification for a 22 party's negligence? Receiving services 23 shall be indemnified, correct. To the 24 extent arising from failure to abide by 25 law or injuries-- damages arising out</p>	<p style="text-align: right;">Page 92</p> <p>1 user ever sued BellSouth? 2 A. I don't know. I imagine so, but I 3 can't -- I don't know. 4 Q. So you don't know? 5 A. I don't know. 6 Q. Has any end user -- Xspedius end user 7 sued Xspedius in a court of law? 8 A. Yes. 9 Q. Have you ever invoked your indemnification 10 rights under the current agreement against 11 BellSouth? 12 A. Not that I'm aware of. I wouldn't 13 necessarily handle that kind of 14 litigation. 15 Q. Do you agree that state commissions have 16 authority to enforce and interpret 17 interconnection agreements that they 18 approve? 19 A Yes. 20 Q Look at page 41 of your direct testimony. 21 A. Okay. 22 Q. Line 17 through 18. 23 A. Okay. Yes. 24 Q. What settlements are you referring to? 25 A. Well, there was one this year that was at</p>
<p style="text-align: right;">Page 91</p> <p>1 of -- yes, negligence, gross negligence, 2 or willful misconduct. 3 Q. So in that instance, is it your intention 4 for 10.5 to make BellSouth indemnify 5 Xspedius for negligence when 10 -- without 6 a cap when 10 4.1 provides for a 7 limitation of liability for negligent 8 actions? 9 A I think the cap is -- let me take a 10 look. 10.4.1? 11 Q. Uh-huh. 12 A. It actually starts out by saying, except 13 for any indemnification obligations of the 14 parties hereunder. Right. So, no, this 15 does not apply to indemnification. 16 Q. So it's your -- is it possible that 17 BellSouth could be liable for damages that 18 are in excess of 7 percent -- of the 19 7-1/2 percent cap under the 20 indemnification provision, whereas the 21 same negligent act would be subject to the 22 7-1/2 percent cap in the limitation of 23 liability provision? 24 A Correct. 25 Q. Okay. Has any -- Has any Xspedius end</p>	<p style="text-align: right;">Page 93</p> <p>1 a 67-percent rate. There was another one, 2 was while I was at East Buyer, probably in 3 the same range. There was a third one at 4 East Buyer also. I believe that was 5 discounted, maybe not quite so heavily 6 because there was a lot of litigation 7 leading up to it. 8 Q. And it's your testimony that those 9 settlements directly resulted from the 10 issues associated with enforcing a 11 multi-state arbitration agreement? 12 A Absolutely Absolutely. 13 Q. Do you have any documents responsive to or 14 that would be -- 15 A. I don't have documents, but I can tell you 16 a little story. We had over \$25 million 17 worth of comp to collect from -- as east 18 Buyer from BellSouth Communications. We 19 had to file a complaint in Georgia, a 20 complaint in Florida, a complaint in 21 Kentucky, a AAA arbitration that spanned 22 three states, Alabama, South Carolina, and 23 Louisiana We won in Florida, we won in 24 Georgia, 100 cents on the dollar. 25 BellSouth appealed in Florida to the</p>

<p style="text-align: right;">Page 86</p> <p>1 bag.</p> <p>2 Q. For the benefit of your end users? You're</p> <p>3 including this language --</p> <p>4 A. No, no --</p> <p>5 Q. -- for the benefit of the end users?</p> <p>6 A. -- I could lose on -- I have an</p> <p>7 indemnification claim and the</p> <p>8 indemnification claim fails. I get stuck</p> <p>9 holding the bag or I think it's too much</p> <p>10 of an uphill battle without this language</p> <p>11 to go forward and I say, I guess I'm going</p> <p>12 to have to pay this. I'm going to have to</p> <p>13 pay for BellSouth's white pages omission</p> <p>14 again. This gives me more of a hook to</p> <p>15 proceed.</p> <p>16 Q By telling your end user to go sue</p> <p>17 BellSouth?</p> <p>18 A. By making sure I've not voluntarily done</p> <p>19 anything to dilute my end users' rights</p> <p>20 BellSouth says, you can't interplead me</p> <p>21 and go directly against BellSouth --</p> <p>22 Q So --</p> <p>23 A. If they try to interplead BellSouth,</p> <p>24 BellSouth says, you can't interplead me</p> <p>25 because I'm not -- there's a 12(b)(6)</p>	<p style="text-align: right;">Page 88</p> <p>1 take -- got a chance to take a look at</p> <p>2 it. I don't know what -- there may be</p> <p>3 some other version of it, some other</p> <p>4 language, you know, five words instead of</p> <p>5 five lines.</p> <p>6 Q. And sitting here today, you do not</p> <p>7 remember a single instance where BellSouth</p> <p>8 has told your white pages customer that</p> <p>9 they have no liability to your customer?</p> <p>10 A. I remember many instances where I've had</p> <p>11 to pay out to customers despite the fact</p> <p>12 that it was BellSouth's error.</p> <p>13 Q. And you believe that what you're</p> <p>14 suggesting in 10.4.4 does what?</p> <p>15 A. Gives us an opportunity to have a fair</p> <p>16 hearing on whose fault it was, who should</p> <p>17 pay based on whose fault it was</p> <p>18 Q. When your tariff -- Your tariff precludes</p> <p>19 you from being liable for the faults of</p> <p>20 negligence of a third party, doesn't it?</p> <p>21 A. I'd have to look at the tariff.</p> <p>22 Q. Presume for me that it does.</p> <p>23 A. Okay. Let's assume for the sake of this</p> <p>24 question that it says -- what -- that I</p> <p>25 can't be liable for the acts of a third</p>
<p style="text-align: right;">Page 87</p> <p>1 motion to dismiss. I have a contract that</p> <p>2 says I'm not responsible for indirect,</p> <p>3 incidental, or consequential damages. I'm</p> <p>4 done. There's no claim against me. Your</p> <p>5 only claim is against this poor sucker</p> <p>6 Xspedius.</p> <p>7 Q. Have you ever seen that happen?</p> <p>8 A. No, but I've seen 12(b)(6) motions</p> <p>9 succeed.</p> <p>10 Q. So this is all hypothetical, 10.4.4?</p> <p>11 A. No. The white pages happens every day. I</p> <p>12 mean, it happens all the time in our</p> <p>13 company.</p> <p>14 Q. Have you seen a response by BellSouth</p> <p>15 saying -- and citing to 10.4.4 saying</p> <p>16 they're not responsible?</p> <p>17 A. This is -- 10.4.4 is not in our -- is</p> <p>18 not a current contract.</p> <p>19 Q So the version that exists -- or do you</p> <p>20 know what version exists today?</p> <p>21 A I'd have to go back and look at it.</p> <p>22 Q. You would agree though that what you're</p> <p>23 proposing is not in your current</p> <p>24 agreement?</p> <p>25 A I can't agree until I -- I'd have to</p>	<p style="text-align: right;">Page 89</p> <p>1 party?</p> <p>2 Q. Or another service provider.</p> <p>3 A. Okay.</p> <p>4 Q. What's your liability?</p> <p>5 A. If the tariff holds, that's probably --</p> <p>6 If the tariff holds, then I can't be</p> <p>7 liable for the fault of another service</p> <p>8 provider. Tariffs don't always hold.</p> <p>9 Q. Are you aware of an instance where a</p> <p>10 tariff has not held?</p> <p>11 A. All the time. You know that. What</p> <p>12 happens is a company files a rate. Rate</p> <p>13 gets approved. Tariff rate doc, filed</p> <p>14 rate doctrine, right. So when someone</p> <p>15 comes back and says, wait a minute, that</p> <p>16 rate's horrible. I can't accept that</p> <p>17 rate. And there's litigation. And</p> <p>18 there's a determination that the rate was</p> <p>19 never really reviewed by the commission</p> <p>20 and that -- that that rate cannot hold</p> <p>21 going forward.</p> <p>22 Q. Are you aware of any instance in</p> <p>23 BellSouth's region where an Xspedius</p> <p>24 tariff has been rejected?</p> <p>25 A. Not -- No. The example I gave, the</p>

	Page 82		Page 84
1	You could have a contract between two	1	liability at the end of the day in the
2	companies -- and I did a go-cart case	2	case that I worked on.
3	when I first came out of law school. End	3	Q. And in the context of the
4	user signs contract with the racetrack	4	telecommunications industry, have you seen
5	owner and says, I waive all liability	5	language between the purchaser of the
6	against you. Racetrack owner has a	6	service and the provider of the service
7	contract with go-cart manufacturer.	7	somehow prevent or insulate the provider
8	Contract with that company says, you know,	8	of the service from damages that
9	under no circumstances will I be liable in	9	precludes --
10	any way for any damages for the use of	10	A. I've seen white and yellow page omissions
11	these go-carts, and you shall post such	11	where the end user only holds us
12	notice on the go-cart. Track owner puts	12	responsible. They don't care that the
13	the go-cart out there. Doesn't put the	13	Bell company made the mistake. And --
14	notice on. And there's a lawsuit	14	Q. Would that --
15	between -- the kid cracks up. Lawsuit	15	A. -- in that circumstance, we would be
16	between the three parties, and that	16	better served to have this type of carve
17	contract would be fairly damning for the	17	out where we could say, we've researched
18	track owner. The track owner is stuck in	18	this, we didn't do anything wrong, and we
19	that circumstance if he doesn't put the	19	believe you should go against BellSouth.
20	notice out. And that contract is front	20	Q. And you believe that the bolded statements
21	and center in the complaint case, Exhibit	21	on 10.4.4 somehow preserves that right?
22	A.	22	A. It makes the end user's claim against
23	Q. I'm not quite clear how that is responsive	23	BellSouth stronger.
24	to my question, so I'll ask it again.	24	Q. So based upon that statement, your
25	Are you aware of how two parties	25	intentions with 10.4.4 is to give rights

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1	to a contract can limit a tort claim	1	to end users who are not parties to this
2	brought by a third party?	2	contract.
3	A. They can engage in risk shifting as	3	A. It's to not take away rights, would be
4	between the two parties. And certainly a	4	better said, to not dilute the rights of
5	company could make a claim that your claim	5	my end users. These aren't hypothetical
6	is not against us, it is against them	6	people. These are customers on my network
7	based on a contract	7	who don't even get to see this contract
8	It's a consequential damage. I	8	until it's filed and signed.
9	have a contract with this other company	9	Q. And your interpretation of this is that
10	that says I don't have to pay	10	BellSouth would be liable for indirect,
11	consequential damages. I never would have	11	consequential damages to the extent the
12	never even provided this service. I never	12	end user had them?
13	would have put my go-cart on your track if	13	A. Essentially, if there was any doubt, if
14	I knew you weren't going to put the sign	14	there's any consideration that this type
15	up. I never would have offered my	15	of situation where the damages are
16	wholesale telecommunication service if,	16	reasonably foreseeable in the first place,
17	you know, this contract didn't exist. I	17	that if there's any suggestion that this
18	had a contract. The only -- The only	18	type of claim would be -- could be
19	reason I provided this service to Xspedius	19	considered indirect, incidental, or
20	was because they said there would be no	20	consequential, we are trying to remove
21	consequential damages, so you have no	21	that shadow of a doubt with this
22	claim against me.	22	language.
23	Q. Have you ever seen that defense work?	23	Q. For the benefit of your end users?
24	A. I don't believe that the go-cart	24	A. And for us, because, as I say repeatedly,
25	manufacturer that I represented had	25	the danger is that I get left holding the

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<p>1 absolutely clear on this issue.</p> <p>2 A. Okay.</p> <p>3 Q. So --</p> <p>4 A. I understand.</p> <p>5 Q -- please take your time to read it and</p> <p>6 answer it.</p> <p>7 (PAUSE.)</p> <p>8 A. I think without this, that there's a</p> <p>9 danger that -- because we're saying</p> <p>10 except -- under no circumstances shall a</p> <p>11 party be responsible or liable for</p> <p>12 indirect, incidental, or consequential</p> <p>13 damages. We're talking about indirect,</p> <p>14 incidental, or consequential damages.</p> <p>15 And, I mean, maybe someone would</p> <p>16 come back against me and say, you know --</p> <p>17 I just don't want to be the one left</p> <p>18 holding the bag when my end user is</p> <p>19 injured because of something that you did</p> <p>20 wrong.</p> <p>21 Q So the answer to my question is, yes, you</p> <p>22 feel that even though your end users are</p> <p>23 not a party to this contract, you believe</p> <p>24 that, without the language that you're</p> <p>25 seeking to add in 10.4.4, your end users</p>	<p>1 A. Not limited by this contract.</p> <p>2 Q. Are you aware of any instance where a</p> <p>3 contract between two parties has limited</p> <p>4 the liability that one of the parties to</p> <p>5 the contract has to a non -- to a third</p> <p>6 party?</p> <p>7 A. I think it could cause one of the parties</p> <p>8 to be left holding the bag, where you're</p> <p>9 more likely to be left holding the bag.</p> <p>10 Q. And my question was, are you aware of any</p> <p>11 instance in your 14 years of practicing</p> <p>12 law where that has occurred?</p> <p>13 A. Where a contract has limited a third</p> <p>14 party?</p> <p>15 Q. The contract has limited -- has</p> <p>16 effectively limited a third-party's right</p> <p>17 to seek damages against one of the parties</p> <p>18 to the contract.</p> <p>19 A. I think that you can create rights,</p> <p>20 that -- there's that. You always see the</p> <p>21 language that says that there are no</p> <p>22 third-party beneficiaries and there's --</p> <p>23 we don't intend to create rights for third</p> <p>24 parties, and so I don't see why -- I</p> <p>25 mean, I think you can certainly have --</p>
Page 79	Page 81
<p>1 would be prohibited from seeking damages</p> <p>2 against BellSouth?</p> <p>3 A. I don't want to put anything in this</p> <p>4 contract that might be used to harm my end</p> <p>5 users. And it seems to me you guys are</p> <p>6 awfully concerned about it for some</p> <p>7 reason, so it must have some effect.</p> <p>8 Despite, you had said, hey, what does this</p> <p>9 matter? But it's one of the 20 or 30</p> <p>10 issues that are left after narrowing it</p> <p>11 down from 108.</p> <p>12 Q. Do you think that provision, 10 4.4,</p> <p>13 limits BellSouth's liability to actual</p> <p>14 damages?</p> <p>15 A. Direct -- Do I think it limits?</p> <p>16 Q. Yes.</p> <p>17 A. You to direct -- from who? In what</p> <p>18 scenario? End user sues, is that it?</p> <p>19 Q. Yeah.</p> <p>20 A. So would BellSouth be limited -- no. The</p> <p>21 point of this paragraph is that the end</p> <p>22 user is not limited in any way in terms of</p> <p>23 the damages that it might be able to get</p> <p>24 against BellSouth.</p> <p>25 Q. Thank you</p>	<p>1 and particularly in these types of</p> <p>2 provisions, insurance, indemnification,</p> <p>3 liability limitations, it can have</p> <p>4 everything to say about a complaint of the</p> <p>5 kind that we're talking about. Because</p> <p>6 you've got three parties involved, and the</p> <p>7 three parties are warring over who's going</p> <p>8 to be left -- who's going to pay for these</p> <p>9 damages.</p> <p>10 Q Who are the three parties?</p> <p>11 A. The end user, our company, and your</p> <p>12 company.</p> <p>13 Q. It's your contention that your end users</p> <p>14 are a party to this contract?</p> <p>15 A. Oh, they would sue us. No, I'm talking</p> <p>16 about a complaint. Where there's going to</p> <p>17 be a complaint where they sue us, you're a</p> <p>18 party, and this contract will be a major</p> <p>19 exhibit in that complaint. And more than</p> <p>20 an exhibit, it will be -- it will be --</p> <p>21 have a very large influence on who gets</p> <p>22 left holding the bag.</p> <p>23 Q. Tell me how a contract between two parties</p> <p>24 limits the tort claim of a third party.</p> <p>25 A. You can have a contract between --</p>

<p style="text-align: right;">Page 74</p> <p>1 Q -- as a witness --</p> <p>2 A Uh-huh.</p> <p>3 Q -- that anything you say in here binds</p> <p>4 your end users?</p> <p>5 A. In the contract?</p> <p>6 Q. Yes.</p> <p>7 A. I can't speak -- No, I can't bind my end</p> <p>8 users. I don't think so.</p> <p>9 Q. All right. Why is it necessary -- If</p> <p>10 that's the case, why is it necessary that</p> <p>11 this language be added to the contract</p> <p>12 between BellSouth and Xspedius?</p> <p>13 A. Well, because I don't want to put myself</p> <p>14 in a situation where I've told you that</p> <p>15 under no circumstances will I hold you</p> <p>16 responsible for indirect, incidental, or</p> <p>17 consequential damages that are caused by</p> <p>18 BellSouth. I'm giving you an awful lot</p> <p>19 here. I'm letting you off the hook for</p> <p>20 indirect, incidental, or consequential</p> <p>21 damages, but I need -- I need to protect</p> <p>22 my company and my end users.</p> <p>23 This could come up in a scenario</p> <p>24 where the end user does come after me and</p> <p>25 I'm left holding the bag. And I say, but</p>	<p style="text-align: right;">Page 76</p> <p>1 10.4 4 states that nothing in this</p> <p>2 agreement limits the receiving party's end</p> <p>3 users from collecting whatever damages or</p> <p>4 claims it has against the providing party?</p> <p>5 A. Could you repeat the question? I'm</p> <p>6 distracted. I'm kind of reading --</p> <p>7 Q. Which one are you reading?</p> <p>8 A. I've been focusing on my piece, and I was</p> <p>9 just taking a quick look at how yours</p> <p>10 reads.</p> <p>11 Q Which section?</p> <p>12 A. 10.4.4 in your version, okay.</p> <p>13 (PAUSE.)</p> <p>14 A. Okay. Go ahead.</p> <p>15 Q. Let me try to rephrase the question</p> <p>16 A. Sure.</p> <p>17 Q. Can you please explain to me why the Joint</p> <p>18 Petitioners are proposing the language</p> <p>19 that's bolded in 10.4.4 given the language</p> <p>20 that they're proposing in 10.5?</p> <p>21 A. Because I don't want -- I don't want to</p> <p>22 prejudice my end users in any way, shape,</p> <p>23 or form. I don't want to suggest for a</p> <p>24 minute that they don't have rights. I</p> <p>25 mean, there's been -- there's a complaint</p>
<p style="text-align: right;">Page 75</p> <p>1 wait a minute, BellSouth is the one that</p> <p>2 screwed up. I did everything perfectly</p> <p>3 right. BellSouth screwed up. And -- But,</p> <p>4 in fact, if I were to agree to this</p> <p>5 without this carve out, I would be stuck</p> <p>6 out on a limb. I would be left holding</p> <p>7 the bag.</p> <p>8 Q. How --</p> <p>9 A. And this makes sure that that doesn't</p> <p>10 happen.</p> <p>11 Q. How in the world will you be left holding</p> <p>12 the bag when you have an express</p> <p>13 indemnification right against BellSouth in</p> <p>14 10 5?</p> <p>15 A. Let's look at 10.5. It's all -- The part</p> <p>16 that I'm reading in 10.5 is limited. It</p> <p>17 says, against any claim for libel,</p> <p>18 slander, or invasion of privacy.</p> <p>19 Q And it continues.</p> <p>20 A. It continues</p> <p>21 I guess the answer is that there's</p> <p>22 different parameters around these two</p> <p>23 provisions; right?</p> <p>24 Q. I don't know what the answer is</p> <p>25 Would you agree with me that</p>	<p style="text-align: right;">Page 77</p> <p>1 -- I believe it went all the way to the</p> <p>2 Supreme Court on this issue And I don't</p> <p>3 want anything in this contract to impede</p> <p>4 my end user's rights And so to be</p> <p>5 cautious, okay, I am trying to -- it</p> <p>6 really -- it says not only is -- no</p> <p>7 provision in this whole section, okay, is</p> <p>8 going to impose any limitation on the</p> <p>9 liability of a party for claims or suits</p> <p>10 for damages incurred by end users of the</p> <p>11 other party, okay, in certain</p> <p>12 circumstances, certain limited</p> <p>13 circumstances.</p> <p>14 Q. Where do you see that?</p> <p>15 A. The limited circumstances, it says,</p> <p>16 are -- vis-a-vis its end users to the</p> <p>17 extent such damages result directly and in</p> <p>18 a reasonably foreseeable manner from the</p> <p>19 first party's performance of services</p> <p>20 hereunder.</p> <p>21 Q All right. And just so I'm clear, you</p> <p>22 believe that without this language, your</p> <p>23 end users are somehow bound by the terms</p> <p>24 and conditions in this contract between</p> <p>25 BellSouth and Xspedius? I want to be</p>

<p style="text-align: right;">Page 70</p> <p>1 the white pages. That stuff happens all 2 the time. 3 Q. And you believe that carving out something 4 for your end users to a -- who are not 5 parties to this contract gives them some 6 type of right? 7 A. No. What I'm saying is, you're going to 8 indemnify me. If someone comes after me, 9 you're going to indemnify me -- 10 Q. So -- 11 A. -- if someone comes after me. This is 12 about me and you. 13 Q. 10.4.4 then is, in your opinion, an 14 indemnification provision? 15 A. It's a carve out. Part of it is a carve 16 out from this section 10. 17 Q. Dealing with what? 18 A. End users. 19 Q. Section 10.5 is entitled indemnification 20 for certain claims, isn't it? 21 A. 10.5, yes 22 Q. Okay 23 A. Hold on. I said that before I turned the 24 page. Yes. 25 Q. And section 10.4.2 deals with limitations</p>	<p style="text-align: right;">Page 72</p> <p>1 reading that this -- the carve out. 2 So nothing in this section 10 3 shall limit a party's obligation to 4 indemnify or hold harmless -- yeah, this 5 is really -- it's a carve out in terms of 6 really the liability provision. And 7 indemnification kind of plays into that. 8 But there's a basic liability provision 9 where we say under no circumstances shall 10 a party be responsible or liable for 11 indirect, incidental, or consequential 12 damages, and then we have this carve out. 13 Q. You have an exception? 14 A. Exactly. 15 Q. And the exception is, unless one of your 16 end users -- 17 A. Or yours. 18 Q. -- or mine sustains some type of damage 19 relating to the performance of services 20 under this agreement? 21 A. Correct. 22 Q. So you would agree with that 23 interpretation? 24 A. Correct. 25 Q. So in the instance where your end user</p>
<p style="text-align: right;">Page 71</p> <p>1 in tariffs; correct? 2 A. Correct. 3 Q. And section 10.4.1 deals with limitation 4 of liability? 5 A. Limitation of liability, correct. 6 Q. All three of those provisions that I just 7 referenced are in section 10? 8 A. Correct. 9 Q. And it's your understanding that 10.4.4 is 10 an indemnification provision? 11 A. 10.4.4? 12 Q. Yes. 13 A. I mean, at the end of the day, it says 14 what it says; right? 15 Q. Well -- and I'm -- 16 A. Nothing in this section shall limit a 17 party's obligation -- nothing in this 18 section 10 shall limit a party's 19 obligation to indemnify or hold harmless, 20 right, the other party. So there's also 21 this hold harmless aspect to it. 22 Q. Set forth elsewhere in this agreement? 23 A. Oh, I see it. Nothing in section 10, duh, 24 duh, duh -- okay. Except in cases -- I 25 misread that. I misread that I was</p>	<p style="text-align: right;">Page 73</p> <p>1 sustains damages -- 2 A. Uh-huh. 3 Q. -- you are insulated, assuming your tariff 4 holds up, from those indirect, 5 consequential, or incidental damages, is 6 that correct? 7 A. If the tariff holds. It doesn't always 8 hold, but, yes, that's correct. 9 Q. And with this provision, you are 10 attempting to give your end users rights 11 against BellSouth that they don't have 12 against you? 13 A. No. I actually -- We're not giving the 14 end users anything. We're just saying 15 that we're not going to let you off the 16 hook in this contract, okay. You may find 17 other ways to defend against that 18 complaint, but we're not going to agree, 19 in this contract, that you're not liable 20 for certain types of damages. 21 Q. Mr. Falvey, it's very a fundamental 22 principle that I'm trying to ask you. 23 A. Okay. 24 Q. Do you think as a lawyer -- 25 A. Yeah.</p>

<p style="text-align: right;">Page 66</p> <p>1 would indemnify us for those damages if 2 the customer comes against us. What 3 you -- What the customer does to you, you 4 know, I'm not -- that's between you and 5 the customer. 6 Q All right. Please read Exhibit 13, 7 please. Right there. Section 10.4.4. 8 A Okay. 10.4 4. I didn't have that in 9 front of me. 10 Q. Right. 11 A. Right. All right 12 Q. Let me know when you're done. 13 A. Okay. 14 Q Under your reading of that contract 15 language there -- 16 A Uh-huh. 17 Q -- Petitioners are proposing, do you 18 believe that it gives your end users the 19 right to seek indirect, consequential, or 20 incidental damages against BellSouth? 21 A. Yes. I mean, let me just say, there's 22 nothing that would prevent them in this 23 language from going after BellSouth. 24 Q And you would agree with me that it 25 specifically allows them?</p>	<p style="text-align: right;">Page 68</p> <p>1 responsible for indirect, incidental, or 2 inconsequential damages. Do you see that? 3 A. Right. 4 Q. Provided -- and then there's this bolded 5 language, and I'm paraphrasing. 6 A. Yeah. 7 Q. Provided that nothing in this language or 8 anything else in section 10 shall impose 9 any limitation of liability for claims or 10 suits for damages incurred by an Xspedius 11 end user -- 12 A. Or BellSouth, yeah. 13 Q. -- or BellSouth's end users that result 14 directly and in a reasonably foreseeable 15 manner from the first party's performance 16 of services hereunder? 17 A. Right. 18 Q. What is the purpose of that bolded 19 language? 20 A. The purpose of the language, let's say -- 21 let's say you've got a guy and he wants a 22 phone book listing and we send it to you 23 to put in the white pages And someone 24 like crumples it up and throws it away or 25 accidentally, you know, is negligent and</p>
<p style="text-align: right;">Page 67</p> <p>1 A. I mean, it doesn't hold you harmless. I 2 mean, I don't know how I could waive my 3 end user's rights in a case that they want 4 to bring directly against you. I mean, I 5 can't -- I can't do that in this contract 6 Q. But why -- if that's the case, then why 7 are you even including this language? 8 A. It's about indemnification, right. It 9 says nothing in this indemnification 10 language -- 11 Q. Well, actually, indemnification is section 12 10.5. 13 A. Right Nothing in this section 10, okay, 14 so, therefore, it's all within -- 15 Q. Right. 16 A. -- 10 5 Let's go look at that. 17 Q. Well, before we go there, I want to make 18 sure that we're on the same page as to 19 this provision. And if you're starting 20 with the bolded language in section 21 10.4.4 -- 22 A Uh-huh 23 Q. -- it says that, under no circumstances, 24 except for gross negligence or willful 25 misconduct, will either party be</p>	<p style="text-align: right;">Page 69</p> <p>1 drops it on the ground. The customer sues 2 us, wins \$10,000. We interplead you into 3 the complaint case and say that this 4 mistake was not our mistake but 5 BellSouth's. We sent it in to BellSouth, 6 and reasonable -- it was reasonably 7 foreseeable and was the direct and 8 proximate cause -- I mean, just hold on a 9 second here -- it proximately caused -- 10 there's proximate causation that that was 11 the reason for this to happen. Then, 12 therefore, you pay the \$10,000, not me I 13 didn't do anything wrong 14 Q. So you're -- 15 A. That's the purpose. 16 Q. -- You're construing 10.4 4 to be an 17 indemnification provision? 18 A. Well, it's a carve out from the 19 indemnification section. 20 Q. Why do you even need to reference your end 21 user's rights in a contract between 22 BellSouth and Xspedius? 23 A. I think I gave a pretty good example. 24 Right? I mean, it could be their phone 25 service, you know, went down or, you know,</p>

<p style="text-align: right;">Page 62</p> <p>1 into its tariffs the same limitation of 2 liability language that it's proposing in 3 this arbitration? 4 A Can you point me to what we're proposing 5 in the arbitration, just so that I have a 6 point of reference? 7 Q. Yeah. It's Exhibit A in Exhibit 4. It's 8 right there on the Bible. 9 A. Exhibit 5. No. 10 Q Do you believe that BellSouth should be 11 liable for indirect, consequential, or 12 incidental damages that -- to your end 13 users? 14 A. Yes. 15 Q Why? 16 A. Well, I mean, one of the key points of one 17 of the issues in this case is that we 18 wouldn't consider them indirect, 19 consequential for the purpose of this 20 contract, right, that there would be this 21 carve out and this is something 22 different. 23 And the reason is simple. If your 24 malfeasance, at whatever level of 25 liability, whether it be negligence or</p>	<p style="text-align: right;">Page 64</p> <p>1 prohibition in its tariffs? 2 A. With our end users, yes, we do 3 Q. Do you believe that between BellSouth and 4 Xspedius, BellSouth should be liable for 5 indirect, consequential, or incidental 6 damages that Xspedius may experience? 7 A. I believe that this contract would -- as 8 long as it doesn't emanate from an end 9 user, I believe that we have agreed in 10 this contract -- I mean, the language says 11 what it says, and I don't have that in 12 front of me. But there's -- that 13 indirect and consequential where -- with 14 respect to Xspedius, there is no liability 15 unless -- and we're trying to create this 16 carve out, wait a minute, if there's an 17 end user involved -- 18 Q. Let me make sure I understand it. You 19 have an end user who has a contract with 20 Xspedius and the contract incorporates 21 Xspedius' tariffs, correct, generally 22 speaking? 23 A. Correct. 24 Q. And so your end user suffers some type of 25 damage as a result of the phone service</p>
<p style="text-align: right;">Page 63</p> <p>1 gross negligence and so on, if yours is 2 the cause of my customer going down, then 3 why should I pay for it? You should pay 4 for it. 5 Q. What is indirect, consequential, or 6 incidental damages? What are they? 7 A. Typically, what -- the classic example 8 that I always give with respect to our 9 tariff is that if a stockbroker is making 10 a call to Wall Street trying to make a 11 billion dollar trade and the line goes 12 down and by the time he's able to make the 13 trade, he's lost a billion dollars, our 14 company is not responsible for the billion 15 dollar loss That's a consequential 16 damage. 17 And phone company tariffs from 18 very early on had to include that 19 provision such that -- such that they 20 could continue to do business, was in the 21 public interest to give them a protection 22 so that every time a phone line went down 23 it wouldn't end up with massive amounts of 24 liability. 25 Q. Does Xspedius use that same type of</p>	<p style="text-align: right;">Page 65</p> <p>1 being down; okay? 2 A. Uh-huh. 3 Q. Under your tariff, you would not be liable 4 to your end user for indirect, 5 consequential, or incidental damages, 6 would that be correct? 7 A. Right. It would be liable for direct 8 damages. 9 Q. Which would be limited to the cost of the 10 service being out. 11 A. If the tariff holds. 12 Q. Okay. 13 A. And what if it's not a typically tariff 14 service, what if it's a data service? 15 Q You don't tariff data services, do you? 16 A. Precisely. That's where I'm concerned. 17 That's why I need this limitation. 18 Q. Staying with my hypothetical. 19 A Uh-huh. 20 Q. Your customer's phone service goes out. 21 It's your opinion that the customer can go 22 to BellSouth for indirect, consequential, 23 and incidental damages? 24 A. This is about indemnification, so I 25 believe that this is really about you</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 58</p> <p>1 read a government procurement contract; is 2 that correct? 3 A. Correct. 4 Q. What about a construction contract? 5 A. Construction contract, we do a lot of 6 construction, so sometime in the last 7 couple of years. 8 Q. And do you specifically remember seeing a 9 15- to 30-percent limitation of liability 10 based upon total revenues actually 11 collected? 12 A. No. 13 Q. So -- 14 A. But it seems reasonable. 15 Q. -- would it be fair to say, sir, that you 16 did not review any standard liability cap 17 formulations prior to filing this 18 testimony? 19 A. No. I've been practicing law for 14 20 years, and that's just not an accurate 21 statement. 22 Q. Did you review any contracts that contain 23 liability cap language that is 15 to 30 24 percent of the total revenues actually 25 collected?</p>	<p style="text-align: right;">Page 60</p> <p>1 A. I believe we have service level agreements 2 with carrier customers 3 Q. What's a carrier customer? 4 A. Like, you know, we provide competitive 5 access services to long-distance carriers, 6 so we provide access from the IXE POP to 7 the Bell C up. 8 Q. Is BellSouth at all involved in that 9 transaction? 10 A. Not -- no. 11 Q. Okay. 12 A. Well, I mean, they're involved to the 13 extent that we deliver the service to -- 14 I'm trying to think. Yeah, we may be 15 delivering it to the Bell tandem, its 16 entrance facility. So they're sort of on 17 the receiving end. 18 Q. Is your ability to live up to your service 19 quality commitment contingent upon 20 BellSouth providing service to you? 21 A. I'm not close enough to the nature of the 22 service level agreements. I know that, 23 you know, through e-mails and so on that 24 we're trying to put together an SLA. 25 We've got to have an SLA so that we can</p>
<p style="text-align: right;">Page 59</p> <p>1 A. Not immediately prior to. 2 Q. When was the last time? 3 A. I don't know, sometime in the last 14 4 years. 5 Q. Okay. And you specifically remember that 6 occurring? 7 A. No, I don't specifically remember it, but 8 it's -- you know, it's been a long 14 9 years. 10 Q. Is it a more accurate statement to say 11 that the language and this sentence that 12 appears on line 25 -- excuse me, page 25, 13 line 13 to 18 is your understanding of 14 what you were informed by your lawyer? 15 A. It's -- 16 MR. CAMPEN: Objection to the form 17 of the question. 18 A. It is, for the most part, based on 19 representations made by an attorney that I 20 hired to give me a better understanding of 21 what a typical commercial arrangement 22 looks like. 23 Q. Does Xspedius provide any service or 24 quality guarantees to its customers 25 today?</p>	<p style="text-align: right;">Page 61</p> <p>1 serve our customers, that kind of a 2 conversation in the e-mails. But I 3 haven't even -- I haven't seen them. I 4 don't know what commitments we make to 5 them 6 Q. All right 7 A. So -- 8 Q. But do you know if the commitments -- or 9 the services that you are providing are 10 somehow contingent upon BellSouth 11 providing services? 12 A. Again, I don't know because I don't -- I'm 13 not close enough. 14 Q. Sure. Do you currently have limitation of 15 liability language in your tariffs? 16 A. Yes. 17 Q. Do you have any plans to remove that 18 language from your tariffs? 19 A. No 20 MR. MEZA. Okay. Let's take a 21 break. 22 THE WITNESS: Okay. 23 (RECESS) 24 BY MR. MEZA: 25 Q. Mr. Falvey, is Xspedius willing to put</p>

<p style="text-align: right;">Page 54</p> <p>1 A Can I start at the beginning of the 2 sentence? 3 Q Absolutely. 4 A. Geesh, it's a long sentence 5 (PAUSE.) 6 A. Okay. 7 Q. Do you know if, in fact, BellSouth's 8 insurance premiums or other risk 9 management measures are taken into account 10 in the establishment of a BellSouth UNE 11 rate? 12 A. I mean, it seems likely that that's -- 13 there are joint and common costs in a 14 typical cost study, and it seems likely 15 that that would be factored in. 16 Q Well, do you know if that is the case? 17 A. I'd say that it's likely. 18 Q Do you know for it to be -- 19 A I didn't testify that I know for certain. 20 I said it's likely, is my testimony 21 Q. So it's a possibility that it's not? 22 A. It's likely that it is. 23 Q. And it's possible that it's not? 24 A I think that's fairly accurate When 25 someone says likely, there is some</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Well, I've talked to an expert, and so -- 2 I don't know. I take it -- But 3 personally, no, I have not seen a hundred 4 contracts But we did hire someone at 5 Kelley Drye & Warren, an attorney. We 6 didn't pull the number out of thin air. 7 Q. The statement on page 25, lines 14 through 8 18 9 A. Uh-huh. 10 Q Where it reference 15 to 30 percent of the 11 total revenues actually collected. 12 A. Uh-huh. 13 Q. Did you review any contracts? 14 A. I spoke to someone who'd reviewed 15 hundreds, who does it for a living. 16 Q. And that wasn't my question. 17 Did you review any of these 18 contracts prior to filing your testimony? 19 A. Which contracts? 20 Q The contracts that you're referencing, the 21 conservative commercial contract; such as 22 government procurement, construction, and 23 similar matters, did you review any of 24 them? 25 A. Well, I don't think there's a reference to</p>
<p style="text-align: right;">Page 55</p> <p>1 possibility that it's not. 2 Q. Would your opinion change regarding the 3 position you take on page 25 and page 24 4 if, in fact, those charges were not 5 included or factored into BellSouth's UNE 6 cost? 7 A. I don't think it would make a huge 8 difference, because the real point is that 9 you've got insurance for these type of 10 arrangements and, you know, in a typical 11 contract, you'd be -- you'd have a 12 30-percent cap under the contract. We're 13 trying to do 7-1/2 percent, which is next 14 to nothing and something that you're 15 insured for; and then we added, as an 16 afterthought, and, by the way, likely 17 already included in your UNE costs -- in 18 your UNE rates. 19 Q. Have you seen contracts with -- that 20 account for this 30 percent that you've 21 referenced? 22 A. I've talked to someone, a commercial 23 attorney, who said that that's typical. 24 Q So you yourself have no personal 25 knowledge?</p>	<p style="text-align: right;">Page 57</p> <p>1 a -- particular contracts. It actually 2 says commercial context. 3 Q. Okay 4 A. Okay. So the testimony says, look, if you 5 look at a wide range, you're going to see 6 anywhere from 15 to 30 percent. 7 Q. Okay. In making that statement, did you 8 do any independent research? 9 A. Yeah. I talked to an attorney who does 10 this for a living. 11 Q So your statement starting on line 13 12 through line 18 on page 25 is derived 13 solely from conversations that you had 14 with an attorney? 15 A It sounds right to me also independently. 16 I -- you know... 17 Q. Yes or no, Mr. Falvey? 18 A. No. I mean, I'm an attorney, also. I've 19 reviewed a lot of contracts, and it seems 20 like -- it seems reasonable. 21 Q. When's the last time you read a government 22 procurement contract? 23 A. Government -- We don't do government 24 procurement. 25 Q. So your answer would be, no, you've not</p>

<p style="text-align: right;">Page 50</p> <p>1 that day, frankly, pursuant to the</p> <p>2 agreement.</p> <p>3 Q. Do you construe paid or payable to mean</p> <p>4 billed?</p> <p>5 A No, because, you know -- that's a good</p> <p>6 example. If it was day 1 or day 15, there</p> <p>7 may not be any services billed under the</p> <p>8 contract, so that's where -- probably why</p> <p>9 they came up with payable.</p> <p>10 Q. So it's amounts of services provided on</p> <p>11 the day --</p> <p>12 A Uh-huh.</p> <p>13 Q -- the claim arose?</p> <p>14 A. Yeah.</p> <p>15 Q. Do you know --</p> <p>16 A. Up through the beginning of the contract.</p> <p>17 Q. Sure.</p> <p>18 A Yeah</p> <p>19 Q. Do you know if another -- if all the</p> <p>20 CLECs construe paid or payable in the same</p> <p>21 manner?</p> <p>22 A. I would expect so. I mean, the</p> <p>23 testimony's pretty clear, I think, about</p> <p>24 how this works. There's a rolling --</p> <p>25 rolling cap that increases over time.</p>	<p style="text-align: right;">Page 52</p> <p>1 that scenario, because when -- what we're</p> <p>2 talking about is telecommunications</p> <p>3 service. It's not water seepage I have</p> <p>4 a leaky basement now, so that's why I'm</p> <p>5 sensitive about a leaky basement. This is</p> <p>6 phone service If it goes down,</p> <p>7 everybody's aware of it.</p> <p>8 Q. I appreciate the answer to my</p> <p>9 hypothetical. You either don't know or</p> <p>10 you know or --</p> <p>11 A. Yes. I guess it's hard for me to conceive</p> <p>12 of that scenario arising under this</p> <p>13 contract.</p> <p>14 Q. So what's the answer to the question?</p> <p>15 A. The question is -- The answer is -- I</p> <p>16 would say that it's possible -- and,</p> <p>17 again, I'm having trouble getting my brain</p> <p>18 around it, but it's possible that we could</p> <p>19 say the end of the contract I mean, I</p> <p>20 distinctly remember some testimony, you</p> <p>21 know, where we said that, you know, if</p> <p>22 you're concerned about us gaming it in</p> <p>23 that regard, okay, that we would -- that</p> <p>24 we would not wait it out until the</p> <p>25 eleventh hour. But you've given me a</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Presume with me that the claim arises on</p> <p>2 the first day of the contract and</p> <p>3 continues until the last day</p> <p>4 A Okay.</p> <p>5 Q. And Xspedius identifies the -- or notifies</p> <p>6 BellSouth of the claim on the last day of</p> <p>7 the contract.</p> <p>8 When, in your opinion, would the</p> <p>9 day the claim arose be?</p> <p>10 A I think we actually conceded on that point</p> <p>11 in our testimony. I want to say it was</p> <p>12 our rebuttal testimony where we said, in</p> <p>13 that circumstance, we wouldn't come to you</p> <p>14 on the last day. We'd say that it's the</p> <p>15 day that the claim arose.</p> <p>16 Q. Okay. So you're not aware of it, the</p> <p>17 damage and a breach occurred throughout</p> <p>18 the term of the contract and you find out</p> <p>19 about it on the last day of the contract.</p> <p>20 Is it your testimony that the limitation</p> <p>21 of liability will be capped at the amounts</p> <p>22 -- or the services provided on day one?</p> <p>23 A You know, you said I'm not aware of it. I</p> <p>24 thought that I was aware of it</p> <p>25 It's just hard for me to imagine</p>	<p style="text-align: right;">Page 53</p> <p>1 scenario where nobody knew about it, like</p> <p>2 water seepage. And so that's hardly</p> <p>3 gaming the scenario, right, because I</p> <p>4 didn't know. And somehow the customer</p> <p>5 didn't know and the customer didn't tell</p> <p>6 me for two years. So you've painted a new</p> <p>7 picture, and I'm doing my best to answer</p> <p>8 it. I'd say that it's possible that</p> <p>9 scenario, where there's no notification,</p> <p>10 that in that case, to be distinguished</p> <p>11 from what we've said in our testimony,,</p> <p>12 that it would be the higher -- later time</p> <p>13 period that would be applicable.</p> <p>14 Q Did you provide any input in drafting the</p> <p>15 CLEC's proposed language?</p> <p>16 A I can't recall. It was just a couple of</p> <p>17 years ago, I believe.</p> <p>18 Q. Can you look on page 25 of Exhibit 1,</p> <p>19 please.</p> <p>20 A. Page 25 of Exhibit 1. Okay. Hang on a</p> <p>21 second. Okay.</p> <p>22 Q. Lines 2 to 5.</p> <p>23 A. Yes.</p> <p>24 Q. If you can, let me know when you're</p> <p>25 finished reading that.</p>

<p style="text-align: right;">Page 46</p> <p>1 loop services -- to end-user loops and -- 2 I'm trying to think -- similar to the EEL 3 usage restrictions but that much broader. 4 Q. Do you consider transport-to-transport UNE 5 combinations as EELs? 6 A. What do you -- Explain what you mean by 7 transport-to-transport UNE combinations. 8 Q. On page 16 of Exhibit 2, lines 1 through 9 2 10 A. No, I don't consider them to be EELs. 11 Q. Why not? 12 A. To me, an EEL is -- and this is why I 13 asked my initial question, loop plus 14 transport. 15 Q. Okay. Did you draft your testimony? 16 A. I took part in the drafting process. 17 Q. How did that process work? 18 A. Like I said earlier, we've been at this 19 for two years, and so the attorneys have 20 been working with the clients for two 21 years. We conducted calls internally with 22 the companies with various and sundry 23 experts. We've had innumerable calls with 24 the people like myself. And over that 25 time period, the attorneys got a sense of</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Uh-huh. 2 Q. And, specifically, the CLEC's proposed 3 language for limitation of liability. 4 A. CLEC version, okay 5 Q. In your eight years in the 6 telecommunications industry, have you seen 7 an identical or similar provision to the 8 one that Xspedius is proposing in this 9 arbitration in an interconnection 10 agreement? 11 A. I haven't seen an identical one. And in 12 terms of beyond that -- similar, there are 13 limitation of liability provisions in our 14 contracts. Got 18 of them currently, and 15 I've probably owned, you know, 50 of them 16 over the years, you know, so hard for me 17 to say what those various provisions, you 18 know, included. 19 Q. Do you have limitation of liability in 20 your language in your tariffs? 21 A. Yes. 22 Q. Do you know what they say? 23 A. I believe that, in general, they limit our 24 liability based on credits -- credits to 25 the customer. They provide credits to the</p>
<p style="text-align: right;">Page 47</p> <p>1 what our issues were. 2 And when the drafting time came 3 around, they wrote up the issues as they 4 understood them at that time, circulated 5 it to the companies, and the companies 6 reviewed the testimony and -- including 7 the witnesses, including myself, and then 8 made recommended changes, and then we 9 reached a final product 10 Q. Did you submit any revisions? 11 A. Yes. 12 Q. Were all of your revisions accepted? 13 A. I can't really speak to that, because that 14 was a communication with my attorneys. 15 Q. Was there any disagreement among the 16 parties as to which revisions to make? 17 A. You know, again, I'd have a little bit of 18 trouble trying to sort out when there were 19 attorneys on those calls. I can't 20 remember any heated battles. It's more 21 likely a hub and spoke arrangement where 22 the parties fed their changes into the 23 center and a new draft came out and you'd 24 get comfortable with the new draft. 25 Q. I'd like for you to look at Exhibit 5.</p>	<p style="text-align: right;">Page 49</p> <p>1 customer. 2 Q. Do you see the portion of your language 3 where it provides -- and I'm 4 paraphrasing -- that the limitation of 5 liability will not exceed 7-1/2 percent of 6 amounts paid or payable as of the day the 7 claim arose? 8 A. 7-1/2 percent, yes, as of the day on which 9 the claim arose, correct. 10 Q. What is your understanding of what the 11 phrase "as of the day the claim arose" 12 means? 13 A. Well, that would be the day that -- let's 14 say that the customer was shut down 15 BellSouth service fails, customer goes 16 down hard. It would be the day that the 17 customer went down. 18 Q. If the service or the claim arises on day 19 one, what is the limitation of liability? 20 I mean, day one of the contract. 21 A. 7-1/2 percent of the aggregate fees and 22 charges and so on payable to such party. 23 It would be a fairly small number, because 24 it's limited to -- it would be the 25 service that you'd provided to us during</p>

<p style="text-align: right;">Page 42</p> <p>1 (THE COURT REPORTER READ BACK THE 2 REQUESTED PORTION OF THE RECORD.) 3 A. So I guess my answer is that it's a 4 laborious process to do -- to undertake 5 this task in any area of the law and that 6 we had sufficient concern about what 7 you were offering in here, that we felt 8 that our language as it is where -- you 9 know, we are before a state public service 10 commission that has no jurisdiction over 11 trademark law. We felt that our position 12 to say that it shall be in accordance with 13 applicable law is much more appropriate 14 given the forum that we're taking the 15 arbitration to. 16 Q. Have you received an opinion regarding 17 whether this language proposed by 18 BellSouth is inconsistent with any aspect 19 of the law? 20 A. I personally am not aware of any such 21 opinion. And one of the things that jumps 22 out at a lot of people is this thing about 23 the logo, because I think a lot of folks 24 see a Burger King or McDonald's on TV and 25 they see the logo.</p>	<p style="text-align: right;">Page 44</p> <p>1 the new world that's being created by the 2 final unbundling rules. 3 Q. For services that you use BellSouth's 4 network to provide, are you aware of any 5 customers that you have that are not the 6 ultimate end users of the 7 telecommunication service that you are 8 providing? 9 A. I'm not aware of any specific customers, 10 but, like I said, we do engage in resell 11 of both -- you know, to -- special 12 access-type services and switch services. 13 Q. Can you explain how you resell those 14 services? 15 A. We would do it the same way any reseller 16 does. We would offer the service to an 17 end user. And, again, do we do this with 18 a particular BellSouth customer in the 19 BellSouth region, I couldn't say for sure, 20 but we do occasionally do resale 21 arrangements. 22 Q. Just to make sure I'm clear, are you 23 reselling services that you purchased at 24 wholesale from BellSouth or services that 25 you are independently providing from</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Well, do you interpret -- 2 A. So there's some concern there That may 3 be cutting ourselves short. 4 Q. Do you read anything in this language that 5 prohibits you from conducting comparative 6 advertising? 7 A. Possibly. I mean, our language ensures 8 that we're not negotiating away 9 comparative advertising rights. And, in 10 contrast, neither are you, I mean in 11 contrasting. In addition, neither is 12 BellSouth. Both companies are guaranteed, 13 without the expense of outside expert 14 opinions, that they will have the full 15 benefit of the applicable law. 16 Q. Does Xspedius serve customers that are not 17 the ultimate end users of the 18 telecommunications service? 19 A. Yes 20 Q. Can you identify those customers, not 21 by -- not individually but by -- I guess, 22 if you can, you know, by a group or -- 23 A. We could resell any of our services to 24 another customer, local switch service, or 25 we may need to resell loop services under</p>	<p style="text-align: right;">Page 45</p> <p>1 BellSouth? 2 A. Well, again, I can't say that this takes 3 place in the BellSouth region, but I would 4 expect that it could entail both 5 arrangements. 6 Q. Do you know if there are any legal 7 limitations on the types of services that 8 you can resell that you purchase from 9 BellSouth? 10 A. I'm not aware of any such legal 11 limitations And, in fact, I mean, we're 12 trying to make sure that there aren't, 13 right, going forward so that we can engage 14 in the activities that I'm talking about 15 without violating this contract that we're 16 negotiating 17 Q. Do you believe or understand that there is 18 a distinction between a qualifying and 19 non-qualifying service? 20 A. I believe that in the TRO those terms were 21 used. 22 Q. What is your understanding of those terms? 23 A. Qualifying and non-qualifying, there's a 24 new term that the FCC came up with 25 relating to -- that was going to apply to</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 38</p> <p>1 recent version --</p> <p>2 A. Okay. That's helpful.</p> <p>3 Q. -- of the general terms and conditions</p> <p>4 section of the agreement that we are</p> <p>5 negotiating.</p> <p>6 A. Excellent. Thank you</p> <p>7 MR. CAMPEN. Just to make a -- I</p> <p>8 believe there was -- we received by</p> <p>9 e-mail yesterday a more recent version</p> <p>10 from Ms. Reynolds. This is not that</p> <p>11 version. I haven't looked at it. You</p> <p>12 probably -- maybe you have.</p> <p>13 MR. MEZA. I have not. Thank you</p> <p>14 for that clarification</p> <p>15 Q. This is the second to most recent version.</p> <p>16 MR. CAMPEN: Good.</p> <p>17 Q. I'd like for you to -- well, first, have</p> <p>18 you ever read the BellSouth version of</p> <p>19 this language?</p> <p>20 A. Again, I probably have taken a look at it</p> <p>21 over the last two years.</p> <p>22 Q. Do you know if BellSouth's proposed</p> <p>23 language mischaracterizes the law</p> <p>24 regarding comparative advertising?</p> <p>25 A. I know that it's a fairly intense area of</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. That's not my question</p> <p>2 A. Okay.</p> <p>3 Q. My question was regarding the use of marks</p> <p>4 for comparative advertising purposes</p> <p>5 A. Just with respect to comparative, I think</p> <p>6 my answer would be the same, that while</p> <p>7 there may be some accurate representations</p> <p>8 here, that you couldn't possibly reduce</p> <p>9 trademark law to -- and I have practiced</p> <p>10 in the area. It was eight years ago</p> <p>11 But -- no, it was more than that. It was</p> <p>12 probably ten years ago now. So I know</p> <p>13 enough to say that you -- this is not the</p> <p>14 beginning and the end of trademark law.</p> <p>15 Q. Whether or not this language includes all</p> <p>16 aspects of trademark law --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- is there anything in here that you see</p> <p>19 that incorrectly sets forth trademark</p> <p>20 law?</p> <p>21 A. In what state?</p> <p>22 Q. Pick one.</p> <p>23 A. I don't know whether this -- this --</p> <p>24 there is something in here -- it's hard</p> <p>25 for me to believe that it's the same in</p>
<p style="text-align: right;">Page 39</p> <p>1 the law, and that -- where this is not a</p> <p>2 common law country or -- you know,</p> <p>3 Louisiana, the laws are all statutory, I</p> <p>4 guess. Here we have case law, and this</p> <p>5 is -- you couldn't possibly reduce all</p> <p>6 that case law to one paragraph</p> <p>7 Q. Do you know if, for a fact, sir, that</p> <p>8 BellSouth's language mischaracterizes the</p> <p>9 law regarding comparative advertising?</p> <p>10 A. I think it reduces it in a manner that</p> <p>11 is -- you couldn't possibly reduce it.</p> <p>12 And whether it's -- whether this part of</p> <p>13 what you're trying to reduce is accurate</p> <p>14 or inaccurate, I could not say with any</p> <p>15 great expertise.</p> <p>16 Q. So the answer is, no, you don't know?</p> <p>17 A. Well, it's a reductionist. I guess that's</p> <p>18 my answer. That was my answer, and I'm</p> <p>19 sticking to it.</p> <p>20 Q. And I'm asking you to answer my question,</p> <p>21 which is, do you know?</p> <p>22 A. Yes.</p> <p>23 Q. And --</p> <p>24 A. This is not an accurate representation of</p> <p>25 the full body of trademark law.</p>	<p style="text-align: right;">Page 41</p> <p>1 all nine states, but -- so -- but can I</p> <p>2 sit here and tell you that there is a</p> <p>3 particular provision that is wrong, no.</p> <p>4 Can I tell you that we would be limiting</p> <p>5 our rights to agree to this, yes.</p> <p>6 Q. And you base that last statement on what?</p> <p>7 A. That there is a broad body of trademark</p> <p>8 law and that you couldn't possibly</p> <p>9 encapsulate it in one paragraph across</p> <p>10 nine states.</p> <p>11 Q. Is that your view on all provisions</p> <p>12 that -- in a contract that intend to</p> <p>13 memorialize the parties' agreement</p> <p>14 regarding a particular rule or law, that</p> <p>15 it's impossible to encapsulate all of the</p> <p>16 laws into a contract?</p> <p>17 A. No.</p> <p>18 Q. So that your statement is limited to</p> <p>19 trademark law?</p> <p>20 A. Hold on a second. Can you give me a</p> <p>21 moment to read through this?</p> <p>22 Q. Sure. Absolutely. Take your time.</p> <p>23 (PAUSE.)</p> <p>24 A. Okay.</p> <p>25 Q. And I think I had a question pending.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q Have you seen an advertisement where 2 Xspedius is comparing its rates and 3 services to the rates and services of 4 another carrier? 5 A. No. 6 Q. Does Xspedius advertise? 7 A. Again, I don't have any specific 8 knowledge, but I would imagine that there 9 is a certain amount of advertising, that 10 there is some -- there's got to be some 11 advertising out there. 12 Q. You're not -- just not aware of it today? 13 A. I don't have any firsthand knowledge of 14 such advertisement 15 Q Does Xspedius intend to comply with the 16 law regarding the use of BellSouth's marks 17 and logos? 18 A. Yes 19 Q Does Xspedius intend to engage in 20 untruthful comparative advertising? 21 A. No. 22 Q. Do you have an objection in using 23 BellSouth's name only in standard-type 24 non-logo format? 25 A. If such usage were permitted by law, we</p>	<p style="text-align: right;">Page 36</p> <p>1 any advertising campaign would be to 2 research whether the campaign is in full 3 compliance with the law 4 And then if it is, then we would 5 want to be unfettered in our ability to 6 engage in that campaign. 7 Q. Have you ever reviewed BellSouth's 8 language regarding the use of its mark in 9 -- each party's mark? 10 A. What language, where? 11 Q The proposed language in this agreement. 12 A. Oh, in the interconnection agreement? 13 Q. Yeah. 14 A. I have certainly seen a distilled version 15 of it, and I've been on a lot of calls, so 16 it's hard for me to say whether -- you 17 know, that -- that particular language 18 lay beneath my eyes at some point in the 19 last two-and-a-half years 20 Q What do you mean by "distilled"? 21 A. There's an issue in this arbitration, 22 right, and there's testimony that I 23 sponsor that relates to this issue, and so 24 that's what I mean, I guess. 25 Q. Okay All right</p>
<p style="text-align: right;">Page 35</p> <p>1 certainly would have an objection to 2 agreeing that just our company somehow 3 would not be able to do that, would not be 4 able to use the logo. 5 Q Do you have a problem in agreeing that the 6 services that you provide are separate and 7 distinct from BellSouth's services? 8 A I guess I'd kind of give the same answer, 9 you know, our company would expect to be 10 able to say anything in an advertisement 11 that it's permitted to say in an 12 advertisement by law. 13 Q. And you don't know what those rules are, 14 do you? 15 A. I don't have, you know, any recent 16 expertise in that area 17 Q Do you think it's your intention to engage 18 in activities or advertisements that would 19 create a likelihood of confusion between 20 the services you provide and the services 21 BellSouth provides? 22 A If that were -- If that is illegal -- and 23 I'm guessing that it is, but if it's 24 illegal, we certainly would not do that 25 I mean, I think the underlying premise of</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. MEZA: Off the record, please. 2 (DISCUSSION OFF THE RECORD.) 3 Q Mr. Falvey, I'd like for you to look at 4 the general terms and conditions excerpt, 5 which is exhibit -- 6 MR CAMPEN: I believe it's 13. 7 Q. -- Exhibit 13, section 11 I, please. 8 MR CAMPEN: It's page 13. 9 A. I'm just trying to get some sense of what 10 the document represents from the first 11 page. Okay 12 Q And you'll see that there are two separate 13 sections in here. One is the customer 14 shorthand version, which would you agree 15 with me means the CLEC version? 16 A. I take it that that's what that's likely 17 meant to be And I'm not sure -- could 18 you tell me what the document is? 19 Q. Have you not seen this before? 20 A. Well, it looks like one of our red lines 21 that we exchanged in the course of 22 negotiations, but I don't know that 23 because you just handed it to me. It 24 could be anything. 25 Q. I represent to you that this is the most</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. Have you amended your agreements in 2 Florida, Tennessee, Louisiana -- excuse 3 me, not Tennessee -- Florida, Georgia, 4 Kentucky, or Louisiana to allow for the 5 provision of BellSouth's FastAccess 6 service when Xspedius serves the customer 7 with voice services via a UNE facility? 8 A. I'm not sure what agreement we would 9 amend, and I'm having trouble with the 10 question. 11 Q. Do your agreements in the BellSouth region 12 currently provide you with the right to 13 receive -- or for your customer to receive 14 BellSouth's FastAccess service when you 15 are the voice provider? 16 A. Well, the only state that I know for sure 17 that we have the combination of the two is 18 Louisiana, so I can't speak to those other 19 states 20 Q Is it Xspedius' -- 21 A The resell DSL product was initially from 22 the side of the company that only operated 23 in five states, and Florida was not one of 24 those states 25 Q. Is it Xspedius' business plan to segregate</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Yes. That's what I was just saying, that 2 the MSA incorporates the terms of the 3 tariffs by reference. To the extent that 4 there's a conflict, the tariff prevails. 5 Q. Do you consider NuVox to be a competitor? 6 A. Yes. 7 Q. Has NuVox ever taken a customer from 8 Xspedius? 9 A. Yes 10 Q. How often does that occur? 11 A. I honestly don't know. 12 Q. What about KMC, do you consider them to be 13 a rival? 14 A. Yes. 15 Q. And have they taken customers from 16 Xspedius? 17 A. I can't say for sure, but I would expect 18 that they have. 19 Q. Would it be a fair assessment to say that 20 the market for business customers -- 21 A. Let me say yes to that I just thought of 22 one where -- I only get involved when 23 there's a situation. I just thought of a 24 situation where one of our customers went 25 to KMC.</p>
<p style="text-align: right;">Page 31</p> <p>1 voice services from data services, or is 2 it your goal to offer a bundled service to 3 each of your customers? 4 A. Our primary product is a bundled product 5 If a customer has -- wants both, 6 particularly if it's a small UNE-P 7 customer and they want data from the same 8 company, then we can do that by reselling 9 BellSouth. 10 Q. What percentage of your customers are 11 residential customers? 12 A. I don't know an exact percentage, but I 13 can say that it's very few 14 Q. Does Xspedius have contracts with its end 15 users or do customers primarily purchase 16 services out of your tariffs? 17 A. Both. 18 Q. Do you know a percentage? 19 A. Well, by "both" I mean that they have an 20 MSA, a contract, but that to the extent 21 it's inconsistent with the tariff, that 22 tariff prevails. It's standard 23 provisioning in the MSA. 24 Q And do you know if your MSA incorporates 25 the terms of your tariffs?</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Would it be a fair assessment to say that 2 the market for business customers is quite 3 intense amongst CLECs? 4 A That's my understanding, amongst CLECs and 5 ILECs -- ILEC, singular, it's very -- 6 yes, it's very competitive. 7 Q Do you know if your contracts with your 8 customers allows for the deviation of your 9 standard limitation of liability language 10 in your tariffs? 11 A I'm not aware of that ever -- I'm not 12 aware of any case where someone's asked 13 for a deviation. There's a lot that I'm 14 not aware of. 15 Q. Does Xspedius engage in comparative 16 advertising? 17 A. I don't know. 18 Q. Are you familiar with any policies or 19 rules that Xspedius may have regarding the 20 use of a BellSouth mark or a logo? 21 A. No. 22 Q. Have you seen an advertisement by Xspedius 23 where it compares its services or rates to 24 BellSouth's services and rates? 25 A No.</p>

<p style="text-align: right;">Page 26</p> <p>1 Now, there's control issues, and 2 that's why I can't say -- you know, I'm 3 not that into the numbers of the company 4 to be able to tell you how much -- when 5 we're looking at control and when we're 6 looking at financial issues. 7 Q Does KMC purchase UNE-P from BellSouth -- 8 I'm sorry, Xspedius? 9 A Does Xspedius purchase UNE-P from 10 BellSouth, yes. 11 Q How percentage of your customer base is 12 served via UNE-P? 13 A. Again, I don't know -- have those kind of 14 numbers off the top of my head. 15 Q Do you have an estimate? 16 A. Percentage of our customers I honestly 17 can't -- Are you talking about our 18 BellSouth customers? I answered earlier 19 that I don't even know how many of the 20 23,000 are in the BellSouth region. 21 Q. So you have no understanding of how your 22 customer base in the BellSouth region is 23 provisioned service? 24 A. I know that we offer UNE-P in five 25 states. I mean, I'm a regulatory person,</p>	<p style="text-align: right;">Page 28</p> <p>1 that Mr. Falvey and Mr. Campen briefly 2 left together and are now back. 3 BY MR. MEZA: 4 Q. Does Xspedius purchase BellSouth's 5 wholesale DSL service? 6 A I believe we do. 7 Q. From BellSouth's FCC tariff? 8 A. I don't know what tariff we purchase it 9 out of, but I know that historically we 10 have purchased BellSouth's DSL services 11 for resell. 12 Q. And do you -- what do you resale it as? 13 Do you know? 14 A I'm not a hundred percent certain. 15 Q. Do you sell it as an Xspedius DSL product 16 or another ISP? 17 A Or what was the other option? Or another? 18 Q. Is it -- do you resell it or sell it to 19 another ISP that -- 20 A. Oh, no. I believe we resell it as a DSL 21 product. I believe we have a DSL product 22 that is the resale. Has someone taken the 23 DSL product and sold something else off of 24 it, it's a big company. 25 Q. So you believe that Xspedius offers a DSL</p>
<p style="text-align: right;">Page 27</p> <p>1 and so I wouldn't have that information at 2 that level of detail. Our core business 3 is not UNE-P 4 Q Is it your business plan that if you don't 5 serve a customer via your own fiber 6 network that you will serve the customer 7 via UNE-P or via UNE facilities, a UNE 8 loop? 9 A. If a customer is within our switch serving 10 area, they're there because we believe we 11 can serve them in one of those ways, and 12 resell -- we also have some legacy resell 13 customers. 14 Q Do you serve customers via UNE loops? 15 A Yes 16 Q. Do you believe you serve more customers 17 via UNE loops than UNE-P? 18 MR CAMPEN: Objection. Asked and 19 answered. 20 A I don't know. 21 MR. CAMPEN: Mr. Meza, can we go 22 off the record for just two minutes? 23 MR. MEZA: Sure. 24 (RECESS.) 25 MR. MEZA: Let the record reflect</p>	<p style="text-align: right;">Page 29</p> <p>1 product that is based upon the purchase of 2 BellSouth's wholesale DSL product? 3 A. Yes. 4 Q Do you know if there are any Xspedius 5 customers receiving BellSouth's FastAccess 6 service in addition to Xspedius' voice 7 service? 8 A. Yes, I have good reason to believe that 9 there are. 10 Q. Do you know how many? 11 A No. 12 Q Why do you have good reason to believe 13 that there are? 14 A. There was an attempt in Louisiana by 15 BellSouth to deny -- withdraw the 16 FastAccess product from our customers who 17 purchase Xspedius UNE-P. We took the time 18 and energy to enter into that and spent a 19 lot of money in that proceeding, and so -- 20 that was a couple of years ago, and so I 21 have every reason to think that that's -- 22 that's the reason we did it. I'm pretty 23 sure we have customers that -- and I 24 would expect that those customers are 25 still on the network.</p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 22</p> <p>1 A. Reciprocal compensation in what we call 2 local transport billing for the most part. 3 Q What is local transport billing? 4 A. That's billing for interconnection 5 facilities where your traffic comes onto 6 my network. There's charges for the 7 facilities that you're using on my 8 network. 9 Q. Does Xspedius provide services that are 10 not based or premised in any way on 11 services that Xspedius purchases from 12 BellSouth? 13 A Yes. 14 Q. What are they? 15 A. I take it you mean services that don't 16 touch your network, would that be -- I 17 can answer it that -- I mean, you know -- 18 Q. Maybe -- 19 A Maybe I should say I don't fully 20 understand that question, and let you 21 clarify 22 Q Are there types of services that Xspedius 23 provides to its end users or customers 24 that do not rely upon Xspedius buying the 25 underlying service from BellSouth?</p>	<p style="text-align: right;">Page 24</p> <p>1 A. When did we do it? All I know is that 2 we've looked at those types of 3 applications at times, and we've been -- 4 we've -- as far as I know, I've signed 5 off, and it moved on from there 6 Q. So you approved the -- 7 A. I approved it, and it's my understanding 8 from some of the calls that I'm on that we 9 do applications like that. 10 Q When you say an application like that, are 11 you referring to the wholesale provision 12 of some type of service? 13 A. Yes. 14 Q. What type of network does Xspedius have? 15 A. 3,500 route miles nationwide 16 Q. Of fiber or -- 17 A. Fiber network. 18 Q. Do you lease that from another carrier or 19 a provider, or is that your own fiber? 20 A For the most part, it's our own fiber. 21 There are a few cities that we lease 22 network. 23 Q. And what do you provide? What type of 24 services do you provide on your own 25 fiber?</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Yes. 2 Q. What services are those? 3 A. Any kind of facilities-based customer 4 who -- whose services would not be on a 5 Bell facility. 6 Q. What do you mean any kind of 7 facilities-based customer? 8 A A customer who's on our facilities We 9 have access across those 20 states and the 10 District of Columbia that we're in. We 11 have access to 600 billings, for example 12 Q. That are -- I presume they're connected 13 directly to your switch in a RBOC central 14 office or in your own? 15 A They are connected to our switch. When I 16 say we have access to the billing, that 17 billing is connected to my network, which 18 is connected to my switch, and, therefore, 19 I could provide a service to that customer 20 without buying anything from BellSouth. 21 Q. Okay. Do you provide those services for 22 purchase by another carrier to resell? 23 A. We have done that It's not our primary 24 line of business. 25 Q. When did you do it?</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Essentially, the tariff services that we 2 have tariffed at the state commissions and 3 at the FCC, so the full pan of services 4 Q. Do you provide local service? 5 A. Yes 6 Q. When you provide local service on your 7 fiber network, do you use the BellSouth 8 loop? 9 A. The -- If it's on our network. 10 Q. What percentage of your customers are on 11 your network? 12 A. I couldn't -- wouldn't know 13 Q. Is it more efficient for Xspedius to serve 14 a customer with its own network or through 15 the BellSouth network? 16 A I can't answer that 17 Q. Who would know the answer to that 18 question? 19 A. Possibly someone in finance or marketing. 20 Q. Is it Xspedius' business plan to get as 21 many customers as possible on its own 22 network or to maximize its customer growth 23 by using BellSouth's network? 24 A. In general, it's -- we aim to bring 25 customers onto our network.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. What about SBC, do you have any pending 2 arbitrations? 3 A We have a Texas arbitration that has been 4 heard by the commission, post-hearing, 5 post-briefs. We have an Oklahoma 6 arbitration and a Kansas arbitration that 7 are pre-hearing And the -- I know that 8 the Kansas hearing is on the same days as 9 the North Carolina hearing. Learn 10 something new every day. 11 Q Well, for BellSouth, I will state that we 12 have no problem with you not showing up. 13 For each of these pending 14 arbitration proceedings in Verizon and 15 SBC's territory, are you arbitrating with 16 other CLECs? 17 A. Yes. 18 Q. For Verizon, for the Maryland, are you 19 arbitrating with other CLECs? 20 A. There is another CLEC in the proceeding, 21 but we're not jointly proceeding We have 22 separate attorneys. 23 Q. And which CLEC is that? 24 A Core Communications. 25 Q. What about the Texas arbitration?</p>	<p style="text-align: right;">Page 20</p> <p>1 similar or identical to the issues that 2 remain in dispute with BellSouth? 3 A. Some of them over -- you know, are 4 similar and some of them are different 5 ones. 6 Q. Is Xspedius proposing the same limitation 7 of liability language in the Maryland, 8 Texas, Oklahoma, or Kansas arbitrations 9 that it is -- 10 A. As I sit here, I don't know 11 Q. What about any of the general -- of the 12 other general terms and conditions that 13 are at issue here? 14 A. You know, I'd like to have that kind of a 15 memory, but I just don't. 16 Q. Do you know how much BellSouth bills 17 Xspedius a month? 18 A. I don't. 19 Q. Do you have an understanding or an 20 estimate? 21 A. No. 22 Q. Do you know how much Xspedius -- excuse 23 me -- yeah, do you know how much Bell -- 24 did I ask you if BellSouth bills Xspedius 25 or Xspedius bills BellSouth?</p>
<p style="text-align: right;">Page 19</p> <p>1 A. About ten carriers -- coalition of ten 2 carriers 3 Q Are any of the carriers that are in this 4 arbitration with you in the Texas 5 arbitration? 6 A KMC 7 Q. What about -- 8 A. They have many entities, so I can't 9 say -- 10 Q. Yes. 11 A -- I can't say that it's the same 12 entities 13 Q. What about Oklahoma? 14 A Roughly five. 15 Q. Again, the same question, are any of the 16 same entities that are in the -- 17 A. NuVox. And you said Oklahoma? 18 Q. Yes. I thought you said Texas, Oklahoma, 19 and Kansas? 20 A. Yes. I'm just trying to think about 21 Oklahoma, and I think that's it 22 Q. Kansas, is NuVox participating with you? 23 A. NuVox and KMC. 24 Q Roughly speaking, do you know if the 25 issues in arbitration with these RBOCs are</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. CAMPEN: I think you said 2 Xspedius bills BellSouth. 3 Q Okay. Let me ask you the inverse Do you 4 know how much BellSouth bills Xspedius a 5 month? 6 A My answer would be that that was the 7 question. It's different then Henry's 8 Q. Okay. Well, why don't we start from 9 scratch. 10 A Yeah. 11 Q. Do you know how much BellSouth bills 12 Xspedius a month? 13 A. I don't know the exact amount It's 14 probably over a million dollars 15 Q. Is that a guess or -- 16 A. Yeah I mean, I'm just trying to give 17 some -- 18 Q. A range? 19 A. -- range in... 20 Q. What about amounts that Xspedius bills 21 BellSouth in a month? 22 A Again, I don't know the exact amount, but 23 I would say -- I think it's in the range 24 of 200,000 25 Q. And do you know what that is for?</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 14</p> <p>1 is disagreement?</p> <p>2 A. No. I mean, if it's an issue in the</p> <p>3 arbitration, then it's an issue for</p> <p>4 everybody.</p> <p>5 Q And your positions are the same between</p> <p>6 the three of you?</p> <p>7 A. Correct.</p> <p>8 Q. Would you agree with me that there are</p> <p>9 certain issues that Xspedius feels more</p> <p>10 strongly about than maybe other CLECs feel</p> <p>11 because of a specific business plan or</p> <p>12 strategy that Xspedius may be trying to</p> <p>13 implement?</p> <p>14 A I'm sure there are some issues that some</p> <p>15 people -- some individuals get passionate</p> <p>16 about, some individual companies might</p> <p>17 take more to heart</p> <p>18 Q. Have you identified on behalf of Xspedius</p> <p>19 those issues that Xspedius believes to be</p> <p>20 important to them?</p> <p>21 A. No We -- I mean, there's sort of two</p> <p>22 colors of issues, there's settled issues</p> <p>23 and then issues that remain in the</p> <p>24 arbitration So, no, I have not attempted to</p> <p>25 prioritize</p>	<p style="text-align: right;">Page 16</p> <p>1 Q How many customers does Xspedius have in</p> <p>2 BellSouth's region?</p> <p>3 A. I don't know the answer to that</p> <p>4 Q. You have no understanding?</p> <p>5 A. No.</p> <p>6 Q. How many customers does Xspedius have in</p> <p>7 total?</p> <p>8 A. Approximately 23,000.</p> <p>9 Q. Do you have an understanding of where the</p> <p>10 greatest percentage of customers reside or</p> <p>11 are located?</p> <p>12 A. Not as I sit here.</p> <p>13 Q. Do you have an understanding of which part</p> <p>14 of the country Xspedius focuses its --</p> <p>15 most of its marketing efforts?</p> <p>16 A. I can't say that we operate our business</p> <p>17 that way, that we have a part of the</p> <p>18 country; Southwestern Bell, you know, five</p> <p>19 states there, three Qwest states, five</p> <p>20 Verizon states, and so --</p> <p>21 Q And how many BellSouth --</p> <p>22 A We're very focused -- Nine BellSouth</p> <p>23 states. We're very focused on each of</p> <p>24 those markets, so our company is very</p> <p>25 focused, as focused in Albuquerque as we</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Do you have an understanding of what</p> <p>2 issues -- or which issues are very</p> <p>3 important to Xspedius as compared to other</p> <p>4 issues?</p> <p>5 (INTERRUPTION.)</p> <p>6 A Can you repeat the question?</p> <p>7 Q. Sure</p> <p>8 Do you have an understanding or</p> <p>9 any knowledge whatsoever as to which of</p> <p>10 the remaining issues are very important to</p> <p>11 Xspedius as compared to other issues?</p> <p>12 A. Again, if -- I mean, I think they're all</p> <p>13 important. Honestly, we started with --</p> <p>14 what -- 108, and we're down to less than</p> <p>15 40, so they're all important to our</p> <p>16 company</p> <p>17 Q. Are -- okay, I'm sorry.</p> <p>18 Are there any issues remaining</p> <p>19 that would not be in dispute if BellSouth</p> <p>20 and Xspedius were negotiating between</p> <p>21 themselves?</p> <p>22 A. Not that I'm aware of, no.</p> <p>23 Q. Is any third party helping any of the</p> <p>24 companies pay for attorneys' fees?</p> <p>25 A. Not that I'm aware of.</p>	<p style="text-align: right;">Page 17</p> <p>1 are in Alabama.</p> <p>2 Q. Is Xspedius currently negotiating an</p> <p>3 arbitration agreement with Verizon, Qwest,</p> <p>4 or SBC?</p> <p>5 A. Yes.</p> <p>6 Q Currently in the process of --</p> <p>7 A Yes.</p> <p>8 Q. Have those -- Has that arbitration</p> <p>9 testimony been filed?</p> <p>10 A. There are many, so there's different</p> <p>11 answers</p> <p>12 Q. Okay With Qwest, are you currently</p> <p>13 arbitrating?</p> <p>14 A. No.</p> <p>15 Q. Verizon?</p> <p>16 A Yes.</p> <p>17 Q. In which states?</p> <p>18 A. Maryland.</p> <p>19 Q. Has that petition been filed?</p> <p>20 A. Yes.</p> <p>21 Q When is it going to hearing?</p> <p>22 A. I can't say for sure as I sit here.</p> <p>23 Q. Do you expect it within the next six</p> <p>24 months?</p> <p>25 A. Yes.</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 10</p> <p>1 systems, they're still operating 2 separately. 3 Q. Xspedius Corp -- 4 A. Yes. 5 Q. -- is that -- 6 A. Prior name of Xspedius, LLC. 7 Q. Is -- 8 A. I said there were several names before 9 that That's one that I -- that didn't 10 come to mind. 11 Q. Is Xspedius, LLC, bound by the tariff 12 filings of Xspedius Corp? 13 A. Yes. 14 Q. Are you a lawyer by trade, sir? 15 A. Yes. 16 Q. Do you provide legal advice to your 17 client? 18 A. Yes 19 Q. Are you appearing here today as a lawyer 20 or as a witness? 21 A. I'm here as a witness and not as an 22 attorney. 23 Q. Do you have any expertise regarding 24 network issues? 25 A. Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 A. I'm sorry, I'm not sure -- could you ask 2 the question, because -- with respect to 3 product development because I'm not sure? 4 Q. Do you consider yourself to be an expert 5 or have the knowledge -- or detailed 6 knowledge about issues relating to product 7 development? 8 A. There are other people in our company that 9 know more about it, but I take part in the 10 product development process in our 11 company 12 Q. Wholesale services that you may provide? 13 A. I know a certain amount about the 14 wholesale services as needed to perform 15 the functions of my job. 16 Q. And what is -- can you describe your 17 knowledge a little bit more, please? 18 A. I don't know what else to say. I -- 19 Q. What do you need to know about wholesale 20 services that Xspedius may provide in 21 order to perform your job? 22 A. I need to understand what the different 23 capacity levels are, T-1 versus DS-3. I 24 need to understand what wholesale services 25 we offer and some understanding of how</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. What is it? 2 A. Well, I've been doing this for eight 3 years, and so over that time period, you 4 tend to become somewhat expert in certain 5 areas of the network. Am I an engineer, 6 no, but I do have some degree of advanced 7 knowledge beyond what a typical attorney 8 on the street would have. 9 Q. Are you familiar with the requirements 10 necessary or the specifications necessary 11 for a loop to transmit xDSL service? 12 A. Again, I wouldn't have the knowledge base 13 of an engineer, but I know more than the 14 typical attorney. 15 Q. What about billing issues? 16 A. The same answer, that there are billing 17 experts that know more than me and a lot 18 of attorneys that know less 19 Q. Transit traffic issues? 20 A. Similar answer, you know, I work with the 21 FCC and the state commission rules and 22 orders, and so I have a very firm 23 understanding of how they relate to those 24 issues 25 Q. Product development?</p>	<p style="text-align: right;">Page 13</p> <p>1 those services are provisioned. 2 Q. Do you consider yourself an expert 3 regarding UNEs cost inputs or cost 4 studies? 5 A. When you say "expert", just to be -- I 6 have to ask, are you talking about 7 qualified as an expert in the legal sense? 8 Q. No, just that you have sufficient 9 knowledge to opine about matters relating 10 to -- 11 A. Okay. 12 Q. -- UNE cost proceedings. 13 A. UNE cost proceedings, participated in many 14 over the years, particularly in the first 15 four years roughly from '96 to 2000, so I 16 know quite a bit about UNE costs More 17 than I'd like to know. 18 Q. Are all of the CLECs that are 19 participating in this arbitration, do they 20 have a unified position on all of the 21 issues? 22 A. Yes. I think there is -- the manner in 23 which the testimony and the rebuttal 24 testimony is filed, that would be true. 25 Q. Are you aware of any issue to which there</p>

<p style="text-align: right;">Page 6</p> <p>1 position?</p> <p>2 A. I manage state, local, and federal</p> <p>3 regulatory matters for Xspedius</p> <p>4 Communications.</p> <p>5 Q. Who do you report to?</p> <p>6 A. The general counsel.</p> <p>7 Q. Do you have people reporting to you?</p> <p>8 A. Yes.</p> <p>9 Q. Who are they?</p> <p>10 A. Michael Moore, he's an attorney. He's the</p> <p>11 director of regulatory affairs. Eric</p> <p>12 Sampson, attorney, director, and corporate</p> <p>13 counsel primarily focused on municipal</p> <p>14 franchise matters. Rabi Carson does our</p> <p>15 compliance. That's R-a-b-i Carson Eddie</p> <p>16 Reese does our tariffs. Orma Williams,</p> <p>17 O-r-m-a, is my secretary. And Scott</p> <p>18 Nichols is the carrier relations person,</p> <p>19 and he has a dotted line to me and reports</p> <p>20 to the general counsel.</p> <p>21 Q. Do your job duties include state, local,</p> <p>22 and federal regulatory matters outside of</p> <p>23 the BellSouth region?</p> <p>24 A. Yes.</p> <p>25 Q. Which regions are those?</p>	<p style="text-align: right;">Page 8</p> <p>1 certifications, but that's a work in</p> <p>2 progress</p> <p>3 Q. Xspedius Management Company, Switch</p> <p>4 Services, LLC, is that still in existence</p> <p>5 today?</p> <p>6 A. Yes. That's the Switch Services</p> <p>7 subsidiary of Xspedius Management Company,</p> <p>8 LLC.</p> <p>9 Q. Who is entering -- Is Xspedius Management</p> <p>10 Company, Switch Services, LLC, a party to</p> <p>11 this arbitration?</p> <p>12 A. No. The subsidiaries are the parties to</p> <p>13 the arbitration. Our prior agreements</p> <p>14 were done as Xspedius -- you know, they</p> <p>15 were done by the parent company on behalf</p> <p>16 of the subs.</p> <p>17 Q. Yes.</p> <p>18 A. So I'd have to go and check to see how it</p> <p>19 was filed in each of the markets to</p> <p>20 really -- you know, for example, the</p> <p>21 cover page in North Carolina says on</p> <p>22 behalf of the Xspedius companies.</p> <p>23 Q. It's somewhat confusing, because, for</p> <p>24 instance, you have tariffs filed in states</p> <p>25 by companies that are not -- or may not be</p>
<p style="text-align: right;">Page 7</p> <p>1 A. We separate in the Swivet territory, in</p> <p>2 the Qwest territory, in the Verizon</p> <p>3 territory, Sprint in Las Vegas.</p> <p>4 Q. Who is your actual employer, which</p> <p>5 company?</p> <p>6 A. Xspedius Communications, LLC.</p> <p>7 Q. Are there are other Xspedius companies,</p> <p>8 and how do they relate to the LLC?</p> <p>9 A. There are a number of operating</p> <p>10 subsidiaries that are subsidiaries of a</p> <p>11 company called Xspedius Management</p> <p>12 Company, and those entities are the</p> <p>13 certificated entities</p> <p>14 Q. Have there been any name changes over the</p> <p>15 past five years relating to who actually</p> <p>16 holds the certificate?</p> <p>17 A. There is another company called Xspedius.</p> <p>18 There have been a series of name changes</p> <p>19 for another company within the Xspedius</p> <p>20 family, and that company was at one point</p> <p>21 known as Xspedius, LLC, and -- but it</p> <p>22 went through a series of name changes</p> <p>23 before that, and that company has separate</p> <p>24 certifications in five BellSouth states</p> <p>25 We have been trying to merge some of the</p>	<p style="text-align: right;">Page 9</p> <p>1 party to this arbitration. Do you</p> <p>2 consider yourself bound by those state</p> <p>3 tariffs, if it's for --</p> <p>4 A. Yes.</p> <p>5 Q. Okay</p> <p>6 A. And the intent is certainly -- the intent</p> <p>7 was to take those entities and -- the</p> <p>8 state commissions approved the merger of</p> <p>9 those entities into our company. There is</p> <p>10 a regulatory lag in documenting that with</p> <p>11 BellSouth, and we're trying to -- trying</p> <p>12 to get that cleared up. I expect it will</p> <p>13 be done before we have a result from this</p> <p>14 arbitration.</p> <p>15 Q. To the extent there is a tariff out there</p> <p>16 that is for a company that's not a party</p> <p>17 to this arbitration and deals with the</p> <p>18 provision of local service, would you</p> <p>19 agree that those tariffs are binding upon</p> <p>20 an entity that is arbitrating in this</p> <p>21 proceeding?</p> <p>22 A. You'd really have to give me more</p> <p>23 specifics because those companies have</p> <p>24 separate OCNs in the BellSouth systems.</p> <p>25 And in some respects in the BellSouth</p>

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 On behalf of the Joint Petitioners</p> <p>4</p> <p>5 Henry C. Campen, Jr</p> <p>6 Parker, Poe, Adams & Bernstein</p> <p>7 150 Fayetteville Street Mall</p> <p>8 Suite 1400</p> <p>9 Raleigh, NC 27601</p> <p>10</p> <p>11 Garret R. Hargrave</p> <p>12 Kelley Drye & Warren</p> <p>13 1200 19th Street, NW</p> <p>14 Suite 500</p> <p>15 Washington, DC 20036</p> <p>16</p> <p>17 On behalf of BellSouth</p> <p>18</p> <p>19 Jim Meza</p> <p>20 Robert Culpepper</p> <p>21 BellSouth Legal Department</p> <p>22 675 West Peachtree Street, NE</p> <p>23 Suite 4300</p> <p>24 Atlanta, GA 30375</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 STIPULATIONS</p> <p>2 Prior to examination of the witness</p> <p>3 counsel for the parties stipulated and</p> <p>4 agreed as follows:</p> <p>5 1. Said deposition shall be taken for</p> <p>6 the purpose of discovery or for use as</p> <p>7 evidence in the above-entitled action or</p> <p>8 for both purposes as permitted by the</p> <p>9 applicable rules of civil procedure,</p> <p>10 2. Any objections of any party hereto as</p> <p>11 to Notice of the taking of said deposition</p> <p>12 or as to the time and place thereof or as</p> <p>13 to the competency of the person before</p> <p>14 whom the same shall be taken are hereby</p> <p>15 waived,</p> <p>16</p> <p>17 3. Objection to questions and motions to</p> <p>18 strike answers need not be made during the</p> <p>19 taking of this deposition, but may be made</p> <p>20 for the first time during the progress of</p> <p>21 the trial of this case, or at any pretrial</p> <p>22 hearing held before the Judge for the</p> <p>23 purpose of ruling thereon or at any other</p> <p>24 hearing of said case at which said</p> <p>25 deposition might be used, except that an</p> <p>objection as to the form of a question</p> <p>must be made at the time such question is</p> <p>asked or objection is waived as to the</p> <p>form of the question,</p> <p>4 That all formalities and requirements</p> <p>of the Statute with respect to any</p> <p>formalities not herein expressly waived</p> <p>are hereby waived, especially including</p> <p>the right to move for the rejection of</p> <p>this deposition before trial for any</p> <p>irregularities in the taking of the same,</p> <p>either in whole or in part or for any</p> <p>other cause,</p> <p>5 That the sealed original transcript</p> <p>of this deposition shall be mailed</p> <p>first-class postage or hand-delivered to</p> <p>the party taking the deposition or its</p> <p>attorney for preservation and delivery to</p> <p>the Court, if and when necessary</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX TO EXAMINATIONS & EXHIBITS</p> <p>2 Examination Page</p> <p>3 Direct by Mr. Meza 5</p> <p>4</p> <p>5 - - -</p> <p>6 Deposition Exhibit Page</p> <p>7 16 114</p> <p>8 17 127</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 JAMES C. FALVEY,</p> <p>2 having been duly sworn,</p> <p>3 testified as follows:</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MR. MEZA:</p> <p>6 Q. Good afternoon, Mr. Falvey.</p> <p>7 A. Good afternoon.</p> <p>8 Q. My name is Jim Meza. I'm a lawyer for</p> <p>9 BellSouth. I'm going to take your</p> <p>10 deposition in regard to testimony that you</p> <p>11 filed in this arbitration proceeding</p> <p>12 pending in North Carolina as well as in</p> <p>13 the other eight states.</p> <p>14 You've been deposed before; is</p> <p>15 that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And I'd ask that you provide a verbal</p> <p>18 response to all of my questions so the</p> <p>19 court reporter can accurately reflect your</p> <p>20 response. If at any time you need to take</p> <p>21 a break, please let me know.</p> <p>22 A. Will do.</p> <p>23 Q. What's your current position, sir?</p> <p>24 A. Senior vice president, regulatory affairs.</p> <p>25 Q. What duties do you perform in that</p>

BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-772, Sub 8
Docket No. P-913, Sub 5
Docket No. P-989, Sub 3
Docket No. P-824, Sub 6
Docket No. P-1202, Sub 4

COPY

In the Matter of)
)
Joint Petition NewSouth)
Communications Corp., et al. for)
Arbitration with BellSouth)
Telecommunications, Inc.)

Raleigh, North Carolina
Wednesday, December 15, 2004
Deposition of JAMES C. FALVEY,
VOLUME I

a witness herein, called for
examination by counsel for BellSouth, in
the above-entitled action, pursuant to
Notice, the witness being duly sworn by
Nicole Ball Fleming, Court Reporter and
Notary Public in and for the State of
North Carolina, taken at the offices of
Parker Poe Adams & Bernstein, 150
Fayetteville Street Mall, Suite 1400,
Raleigh, North Carolina, beginning at 1:45
p.m., on Wednesday, December 15, 2004,
such proceedings being taken
stenographically by Nicole Ball Fleming.

<p style="text-align: right;">Page 118</p> <p>1 frame and the customer's premises?</p> <p>2 A. Sure.</p> <p>3 Q. You would accept that that's a general</p> <p>4 definition of a loop?</p> <p>5 A. Yes.</p> <p>6 Q. And would you accept -- at least that's</p> <p>7 what's represented in this diagram, that</p> <p>8 the multiplexing that you are requesting</p> <p>9 to be priced at TELRIC is after the loop</p> <p>10 enters the main distribution frame?</p> <p>11 A. Yes. It's on the backside of the main</p> <p>12 distribution frame, if you will, where the</p> <p>13 loop's the front side.</p> <p>14 Q. So you're not suggesting that the</p> <p>15 multiplexing that's in -- that's being</p> <p>16 done in your collocation space is part of</p> <p>17 the loop, are you?</p> <p>18 A. It's connected to loops to be a cross</p> <p>19 connect.</p> <p>20 Q. That's not my question.</p> <p>21 My question is, you're not</p> <p>22 suggesting that the multiplexing that's</p> <p>23 being performed in your CLEC collocation</p> <p>24 space is part of your loop, are you?</p> <p>25 A. Not in this diagram, no.</p>	<p style="text-align: right;">Page 120</p> <p>1 A. You have a sandwich, and one piece of</p> <p>2 bread is priced at non-TELRIC, the other</p> <p>3 piece of bread is TELRIC, so what price is</p> <p>4 the peanut butter and jelly? That's the</p> <p>5 question.</p> <p>6 Q. I'm asking you to please explain to me why</p> <p>7 you believe, on whatever grounds you</p> <p>8 believe exist, to support your belief that</p> <p>9 the multiplexing that would occur in a</p> <p>10 CLEC collocation space should be at</p> <p>11 TELRIC?</p> <p>12 A. It's offered under your contract today.</p> <p>13 So obviously you think you have a legal</p> <p>14 obligation to offer it today. So there's</p> <p>15 got to be some demonstration that it</p> <p>16 should no longer be offered at TELRIC, and</p> <p>17 we don't have that demonstration today</p> <p>18 Q. So your sole basis is that it's currently</p> <p>19 provided -- you believe it's currently</p> <p>20 provided at TELRIC?</p> <p>21 A. It's required by 251, 252 to be</p> <p>22 unbundled. It's part of your network. I</p> <p>23 need access to it to compete. And --</p> <p>24 Q. Do you --</p> <p>25 A. And we -- you know, if the transport</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. All right. Do you know if BellSouth</p> <p>2 provides the multiplexing at the outside</p> <p>3 plants at the DLC for a charge?</p> <p>4 A. I don't know.</p> <p>5 Q. Would you consider that multiplexing to be</p> <p>6 part of the loop?</p> <p>7 A. This multiplexing, yes.</p> <p>8 Q. And so why, again, do you believe the</p> <p>9 multiplexing that's occurring in the CLEC</p> <p>10 collocation space should be at TELRIC?</p> <p>11 A. Well, you've drawn it separately on this</p> <p>12 diagram. And so while in this diagram it</p> <p>13 may not be part of the loop, nor is it</p> <p>14 part of the transport, and so that's why</p> <p>15 we have this issue, should it be priced in</p> <p>16 a manner similar to the transport or</p> <p>17 should it be priced similar to the loops</p> <p>18 that are connected to it, albeit</p> <p>19 indirect.</p> <p>20 Q. And I'm asking for the support for your</p> <p>21 belief that it should be priced at</p> <p>22 TELRIC.</p> <p>23 A. And I'm telling you that it's currently</p> <p>24 priced at TELRIC. Why would it change?</p> <p>25 Q. How do you know it's currently --</p>	<p style="text-align: right;">Page 121</p> <p>1 changes rate but the loops don't, what do</p> <p>2 you do with what's in between?</p> <p>3 Q. So you --</p> <p>4 A. That's an issue that we want the state</p> <p>5 commissions to decide.</p> <p>6 Q. You're stating it's your opinion that the</p> <p>7 multiplexing that's occurring in your</p> <p>8 collocation space is performed by</p> <p>9 BellSouth, regardless of whether or not</p> <p>10 you request the voice line to be mux-ed</p> <p>11 up?</p> <p>12 A. Well, if we're -- you know, it is</p> <p>13 performed when we purchase it out of the</p> <p>14 contract at TELRIC.</p> <p>15 Q. You believe --</p> <p>16 A. We would only purchase it if we needed --</p> <p>17 if we had more likely than not DS-1s to be</p> <p>18 mux-ed to DS-3.</p> <p>19 Q. You believe that today you are purchasing</p> <p>20 multiplexing that occurs in your</p> <p>21 collocation space at TELRIC?</p> <p>22 A. Correct.</p> <p>23 Q. And is that the sole grounds as to why you</p> <p>24 believe --</p> <p>25 A. And it's there because it was priced that</p>

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<p>1 way by the state commissions under 251, 2 252 or you agreed to offer it that way in 3 our current contracts, and we'd like to 4 keep it that way. 5 Q. Any other reason? 6 A. No. 7 MR. CAMPEN: Mr. Meza, just for my 8 benefit, this is issue 27; is that 9 correct? 10 MR. MEZA: Yes. 11 Q. Do you know if there's a separate rate 12 element for the multiplexing that's 13 occurring in your collocation space? 14 A. I believe there is, yes. 15 Q. Do you know what it is in North Carolina? 16 A. Not off the top of my head. 17 Q. Do you know what the rate element is for 18 the multiplexing that's occurring on the 19 outside plant? 20 A. No. 21 Q. Do you know if it's any different than the 22 multiplexing rate that you believe is 23 being applied in the collocation space? 24 A. I don't know. We don't purchase the other 25 multiplexing. We just purchase this</p>	<p>1 Q. Why don't you look on page 52 of your 2 rebuttal testimony. 3 A. Okay. 4 Q. Lines 9 through 11. 5 A. Okay. 52 of my rebuttal. 6 Q. Excuse me, 55 of your rebuttal, which is 7 Exhibit 2. 8 A. Okay. Okay. 9 Q. When such multiplexing is attached to a 10 UNE loop, do you see that? 11 A. On what line? 12 Q. Line 10. 13 A. Correct. We used the word connected on 14 line 2 and we used the word attached on 15 line 10, meant to be used 16 interchangeably. 17 Q. Where do you see connecting -- oh, 18 connected to a UNE. 19 Do you believe that, as set forth 20 in that diagram, the multiplexing is 21 connected or attached to the loop? 22 A. Correct. Do you see where there's 23 multiple lines on the left side of the 24 multiplexor? Those are all for different 25 loop connections.</p>
Page 123	Page 125
<p>1 multiplexing. In other words, we don't 2 purchase the loop multiplexing, to my 3 knowledge, except as part of a loop. 4 Q. Right. 5 A. So we don't purchase it independently, but 6 we do purchase the multiplexing that's in 7 the CLEC collocation space. 8 Q. If the multiplexing is not attached to a 9 UNE loop, do you believe that it is 10 subject to TELRIC? 11 A. I don't think we've ever purchased it, so 12 I wouldn't have any reason to. 13 Q. As it's described today or appears today, 14 do you believe that the multiplexing in 15 the collocation space is attached to the 16 loop? 17 A. It is purchased so that loops can be 18 attached to it, yes. 19 Q. Do you believe that the multiplexing that 20 is in the CLEC collocation space is 21 attached to the loop? 22 A. Connected to the loop. 23 Q. Is attached? I'm asking is attached? 24 A. And by "attached", do you mean that they 25 touch?</p>	<p>1 Q. Right. Those are all different loops, 2 aren't they? 3 A. Correct. 4 Q. What is your understanding of line 5 conditioning? 6 A. Line conditioning is conditioning that's 7 done to a copper line to -- typically to 8 make it available for other types of 9 services other than voice service, such as 10 DSL. 11 Q. What other types of service other than 12 voice service? 13 A. Such as DSL. 14 Q. Okay. What other types of services other 15 than DSL? 16 A. There are ethernet services, for example, 17 that could also be provisioned over a 18 similar loop. 19 Q. Is Xspedius currently offering services 20 via ethernet? 21 A. Not provisioned in that manner, no. 22 Q. What is your opinion as to BellSouth's 23 obligation to provide line conditioning? 24 A. BellSouth is obligated to provide line 25 conditioning to the full extent required</p>

<p>Page 126</p> <p>1 by the FCC rules.</p> <p>2 Q What about the decision in the TRO?</p> <p>3 MR. CAMPEN: Objection to form.</p> <p>4 MR. MEZA: Thank you. That's a</p> <p>5 bad question</p> <p>6 Q. What about obligations identified in an</p> <p>7 FCC order?</p> <p>8 A. If there is an order that's been</p> <p>9 incorporated into our contract in a manner</p> <p>10 that would somehow eviscerate the FCC</p> <p>11 rules or if the order had itself</p> <p>12 eviscerated the rules, but -- my answer</p> <p>13 doesn't really change. The rules are the</p> <p>14 rules. And so an order that didn't change</p> <p>15 the rules on line conditioning does not</p> <p>16 limit my rights to obtain line</p> <p>17 conditioning under the line conditioning</p> <p>18 rules.</p> <p>19 Q So if an order adds requirements or limits</p> <p>20 requirements as set forth in a rule</p> <p>21 regarding what it defines as line</p> <p>22 conditioning, it's your opinion that the</p> <p>23 order does not apply?</p> <p>24 A Typically the order would also effect a</p> <p>25 change to the rule, if, in fact, it was</p>	<p>Page 127</p> <p>1 intended to effect a change to that rule</p> <p>2 Q Do you know what the FCC intended in the</p> <p>3 TRO regarding the definition of line</p> <p>4 conditioning?</p> <p>5 A I know what I'm entitled to under the FCC</p> <p>6 rules. If you'd point me to something in</p> <p>7 the TRO, we can talk about it. It was a</p> <p>8 big order. What was it, a thousand pages</p> <p>9 or something like that?</p> <p>10 Q. Maybe</p> <p>11 A I do have a copy of the rule. I think</p> <p>12 this is from the TRO, but maybe not. Why</p> <p>13 don't -- Show me.</p> <p>14 Q. I don't know where you got that.</p> <p>15 MR. MEZA: Mark this as the next</p> <p>16 exhibit</p> <p>17 (DEPOSITION EXHIBIT NO. 17 WAS MARKED.)</p> <p>18 Q. You wanted it.</p> <p>19 A. Okay.</p> <p>20 Q. Paragraph 643, Exhibit No. 17.</p> <p>21 A. Paragraph 643. Okay.</p> <p>22 Q. It is the same document</p> <p>23 A. Okay.</p> <p>24 Q. If you read the first -- second sentence.</p> <p>25 A. Second sentence.</p>
<p>Page 128</p> <p>1 (PAUSE.)</p> <p>2 A. Yes.</p> <p>3 Q. Do you see -- or would you agree that the</p> <p>4 FCC states that line conditioning is</p> <p>5 properly seen as a routine network</p> <p>6 modification that incumbent LECs regularly</p> <p>7 perform in order to provide xDSL services</p> <p>8 to their own customers?</p> <p>9 A. Yes, it says that.</p> <p>10 Q. Do you believe that that is the standard</p> <p>11 to which BellSouth must provide line</p> <p>12 conditioning to Xspedius?</p> <p>13 A. I think that BellSouth must comply with</p> <p>14 the rule -- the line conditioning rule.</p> <p>15 So, no, to the extent that this says</p> <p>16 something less than what the line</p> <p>17 condition rules say -- and the rules, also</p> <p>18 in this order -- if you look at page 10.</p> <p>19 Q. Uh-huh.</p> <p>20 A. Yeah, I was checking to see what the name</p> <p>21 of the attachment was. But it sets out</p> <p>22 the line conditioning obligation.</p> <p>23 Q. So it's your opinion that the statements</p> <p>24 in a TRO are not effective as far as what</p> <p>25 BellSouth's obligations are to perform</p>	<p>Page 129</p> <p>1 line conditioning?</p> <p>2 A. I think that -- as in any order, that the</p> <p>3 rule language is what was reduced -- what</p> <p>4 becomes part of the code, becomes part of</p> <p>5 the CFR. And, I mean, that sentence says</p> <p>6 what it says, but so what?</p> <p>7 Q So you're not putting any emphasis or</p> <p>8 weight on that sentence in the TRO?</p> <p>9 A. No. I'm trying -- I'm trying to enforce</p> <p>10 the rule.</p> <p>11 Q. Is it your opinion that in all instances a</p> <p>12 rule trumps an FCC order?</p> <p>13 A. Well, I'm not sure that this order was</p> <p>14 meant to say anything. It says that it's</p> <p>15 properly seen as a routine network</p> <p>16 modification that incumbent LECs regularly</p> <p>17 performed.</p> <p>18 So -- But when they went to write</p> <p>19 up the rule, there's no exception relating</p> <p>20 to that. So, yeah, I think the rule is</p> <p>21 more persuasive than -- and my guess is</p> <p>22 there's a lot of similarity between the</p> <p>23 broader section of the order and what they</p> <p>24 reduced to writing here. But I don't see</p> <p>25 anything about routine network</p>

<p style="text-align: right;">Page 130</p> <p>1 modifications in the rule. 2 Q. So I'm going to ask my question again. 3 Do you believe that in all 4 instances where there is a conflict 5 between an FCC order and a rule, that the 6 rule governs? 7 A. Yes, I think the rule has particular 8 weight. 9 Q Is it possible that the rule could -- or 10 that the order can clarify what is set 11 forth in general terms in the order -- I 12 mean, excuse me, in -- is it possible 13 that the order can clarify what's set 14 forth in general terms in the rule? 15 A Yeah, I think that there can be more in 16 the order but that something as critical 17 as the exception that I think BellSouth 18 wants to read into the rule, I think that 19 would be in the rule. So you could get 20 some color from the order, but not an 21 exception that swallows the rule. 22 Q And your interpretation of the rule would 23 preclude application of the order as it 24 relates to the definition of line 25 conditioning, wouldn't it?</p>	<p style="text-align: right;">Page 132</p> <p>1 granted through the TRO? 2 MR. CAMPEN: Objection to the form 3 of the question 4 A I believe that, because the exception 5 would swallow the rule, that had they 6 intended that, they would have put it in 7 the rule 8 Q. Why do you believe the exception would 9 swallow the rule? 10 A. Well, it's -- I think that if you make an 11 exception based on routine network 12 modifications, that there would be too 13 many circumstances. I mean, we've seen 14 this with EELs all the time, that -- 15 Q. I mean, is it your testimony that with the 16 language in the TRO of limiting line 17 conditioning to when BellSouth provides it 18 to its own customers, that somehow that is 19 swallowing the rule? 20 A. Yes, it's not in the rule and it suggests 21 that we can't use the conditioned loop 22 for -- to offer different services. The 23 telecom act was very clear that we -- and 24 unbundled the network and not the 25 services. This is not resale Resale,</p>
<p style="text-align: right;">Page 131</p> <p>1 A Could you repeat the question? 2 Q And your interpretation of the rule would 3 preclude you from applying any meaning to 4 the TRO's definition of line conditioning 5 in the order? 6 A No. Actually the rule, like I said, it's 7 very similar. I'm just saying that by 8 using the words routine network 9 modification in passing in these 10 paragraphs, I don't think they meant to 11 create an exception that would swallow the 12 rule. But if you look at the rest of this 13 paragraph -- look at 642 and 643. There's 14 a lot of overlap, bridge taps, load coils, 15 other equipment. 16 Q. So let me understand -- let me see if I 17 understand your testimony. You believe 18 that in some circumstances an order can 19 clarify the general language found in a 20 rule; correct? 21 A I think what I said was that it could 22 provide some color. 23 Q. And in this instance, because it is such 24 an extreme deviation from the order, you 25 believe that there should be no color</p>	<p style="text-align: right;">Page 133</p> <p>1 we're limited to your services, 2 unfortunately. But unbundling is all 3 about using the network for other 4 services. And so clearly that's not what 5 the commission meant to do. 6 Q. So they -- paragraph 643 is an error? 7 A. In what respect? 8 Q. Line conditioning is properly seen as a 9 routine network modification that 10 incumbent LECs must -- excuse me, 11 regularly perform in order to provide xDSL 12 services to their own customers? 13 A Right. 14 Q. You're saying that sentence should be 15 given no effect? 16 A. Actually, the next sentence to me is more 17 important. Incumbent LECs must make the 18 routine adjustments to unbundle loops to 19 deliver services at parity with how 20 incumbent LECs provision such facilities 21 for themselves. 22 So you have to provision the 23 facilities in a manner -- not for the 24 services that you're providing, but you 25 just -- you need to provision facilities</p>

<p style="text-align: right;">Page 134</p> <p>1 -- or line -- do line conditioning for 2 us just as you would do line conditioning 3 for yourself. And that means removing and 4 preparing the line in a manner that it 5 will work for the service intended. 6 Q. Did you just say that we have to do line 7 conditioning in the manner that we perform 8 for ourselves? 9 A No. I said you need to strip the line. 10 You need to strip the copper of all the 11 detritus that interferes with whatever 12 service a company wants to put over it. 13 That's what I said. Because it focuses on 14 the preparation of the facilities. 15 And, frankly, again, you know, we 16 need to go back and look at what was 17 reduced to writing in the rule; right? 18 And it doesn't say anything here 19 about what type of services it's going to 20 be used for I mean, you're going to 21 offer one color, we're going to offer 22 another If you've offering -- Let's say 23 you're offering ADSL and I want to offer 24 HDSL Clearly you would have to condition 25 the line in a manner that would support my</p>	<p style="text-align: right;">Page 136</p> <p>1 and you note that they say xDSL. They 2 don't say the FastAccess service. They 3 say, you guys do this stuff all the time, 4 all right. That was not meant -- Your 5 reading of that is a limitation, and it 6 was never meant as a limitation. If it 7 was meant as a limitation, it would be 8 paragraph 1, front and center, Exhibit A 9 in the rule. And the rule says nothing 10 about what types of services a CLEC can 11 offer over a conditioned loop. 12 Q. You don't work at the FCC, do you? 13 A. No. 14 Q. And you didn't write this order, did you? 15 A. I did not write this order, no. 16 Q. And you didn't write the rule, did you? 17 A. No. 18 Q. So this is your interpretation of what the 19 FCC meant; correct? 20 A. Yes. 21 Q. And you're attempting to reconcile 22 language that appears in an order that 23 doesn't appear in a rule? 24 A. I'm actually -- 25 MR. CAMPEN: Objection to the</p>
<p style="text-align: right;">Page 135</p> <p>1 service. 2 Q. Mr. Falvey -- 3 A Yes. 4 Q -- are you interpreting the rule, as 5 you've read it, to disregard the sentence 6 in paragraph 643 reading: Instead, line 7 conditioning is properly seen as a routine 8 network modification that incumbent LECs 9 regularly perform in order to provide xDSL 10 services to their own customers? 11 A No. Actually, let's read it It says, 12 the first sentence, line conditioning does 13 not constitute the creation of a superior 14 network as some incumbent LECs argue. 15 Instead, line conditioning is properly 16 seen as a routine network modification 17 that incumbent LECs regularly perform in 18 order to provide xDSL services to their 19 own customers. 20 What the commission is saying is, 21 you're not creating a superior network by 22 doing some line conditioning. This is 23 something you do all the time You know 24 how to do line conditioning. You do it 25 all the time to provide your xDSL service,</p>	<p style="text-align: right;">Page 137</p> <p>1 form 2 A I'm trying to point out to you that all 3 the -- the twists and spin that you're 4 putting on the ordering paragraph is 5 nowhere to be found in the governing rule, 6 which suggests to me that my 7 interpretation is a better interpretation 8 than yours 9 Q. Do you have any legal support for the 10 theory that an order trumps an FCC order 11 to the extent there is a conflict? 12 A. That an order trumps an FCC order, could 13 you -- 14 Q. Excuse me, that a rule trumps an FCC order 15 to the extent there is a conflict? 16 A I've been doing this for a long time, and 17 I know that -- for example, I remember 18 reading California orders, and we -- you 19 go back and you read the ordering 20 paragraph because the ordering 21 paragraph -- let's just say, I didn't say 22 that you read away the entire order, but I 23 think that -- that what was meant to be 24 enforced against BellSouth is reduced in 25 the rule And you start with the rule,</p>

<p style="text-align: right;">Page 138</p> <p>1 and if you can't -- if the stuff that 2 you're trying to read into the rule 3 doesn't appear there, then you have a 4 burden to tell me why, if it was so 5 important, they didn't put it in the 6 rule. 7 Q That's your interpretation? 8 A I think that's generally why the FCC -- 9 Why would they even issue the rules in the 10 first place? Because they want to show 11 what's important about what they just 12 said Because they don't want people to 13 have to go back and read a thousand 14 paragraphs to understand what is truly 15 and, you know, ultimately the law. What's 16 going to be put in the CFR -- This doesn't 17 get into the CFR. 18 Q. So you believe that, essentially, FCC 19 orders are -- should have no binding 20 effect? 21 A. No, that's not what I said. 22 Q. But to the extent there's a conflict, 23 the -- an FCC order trumps -- excuse me, 24 an FCC rule trumps an order? 25 A Is that a question?</p>	<p style="text-align: right;">Page 140</p> <p>1 look at the language. Let's look at what 2 we've proposed. 3 Q. All right. What type of line conditioning 4 do you want BellSouth to do -- 5 A. Beyond 18,000 feet. 6 Q. For what purpose? 7 A For ethernet services, for other services 8 that I've talked to our marketing folks 9 that they've told me they want to provide 10 and they would need you to do that in 11 order to provide them. 12 Q And what would need to be removed from a 13 loop in excess of 18,000 feet for ethernet 14 services to apply? 15 A. Load coils, at 18,000 feet, bridge taps. 16 Q. And is it your opinion that BellSouth is 17 not going to remove load coils for loops 18 in excess of 18,000 feet? 19 A. It goes without saying that if -- you're 20 limiting it to the line conditioning that 21 you do for yourself. And if your services 22 aren't -- don't require to go beyond 23 18,000 feet and ours do, then, yeah, 24 you're refusing by demanding the contract 25 include the language that you're</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. Yeah, I'm asking you. Will you agree? 2 A. Repeat the question. 3 Q To the extent there is a conflict between 4 a rule and an FCC order, do you believe 5 that the rule should be considered? 6 A Yes. 7 Q Okay. Do you consider the TRO to be 8 applicable law? 9 A. Yes. I mean, I even read this paragraph 10 to support our position. Competitors 11 cannot access the loops inherent features, 12 functions, and capabilities unless it has 13 been stripped of accreted devices It 14 doesn't say certain accreted devices, all 15 accreted devices. 16 Q. Is it your understanding that BellSouth is 17 refusing to perform line conditioning? 18 A Certain types of line conditioning, yes. 19 Q. What type of line conditioning do you want 20 BellSouth to perform that BellSouth does 21 not perform for its own customers? 22 A. Well, if you'd accept the language that 23 we've proposed, we'll be fine 24 Q. Nice try. 25 A. Well, let's go -- let's go look -- let's</p>	<p style="text-align: right;">Page 141</p> <p>1 demanding. 2 Q. You're not currently offering ethernet 3 services today, are you? 4 A No. I've talked to my marketing folks, 5 and they're very interested in them They 6 referred me to a website. And so the 7 answer -- no, we are not, today. 8 Q. Do you know -- 9 A. But this contract, of course, has a -- 10 what -- three-and-a-half-year term. 11 Q. Do you know for a fact whether or not 12 ethernet services cannot be provided on a 13 loop that has a load coil on it? 14 A. It's my understanding that we would need 15 to remove the load coil and -- and -- in 16 order to do that. 17 Q. And what is that understanding based on? 18 A. Based on conversations with people in my 19 company. 20 Q. So you don't have any personal knowledge? 21 A. No, I do, actually. I do I work for 22 Xspedius I represent the company. We 23 can't have a thousand employees come 24 here to testify. I have personal 25 knowledge. He referred me to the</p>

<p style="text-align: right;">Page 142</p> <p>1 website. I reviewed it. He told me he 2 needed it in order to provide the product, 3 and I'm testifying that our company needs 4 it. I think that's fair. 5 Q. What website did you review? 6 A. I don't remember the weblink. 7 Q. Have you reviewed any specifications or 8 standards of the ethernet product? 9 A. I don't remember exactly what I reviewed 10 when I went to the website, but I took the 11 word of the expert within my company who 12 said he needs this. 13 Q. Could he be wrong? 14 A. Could he be wrong? I doubt it. I've 15 worked with Benjamin for several years, 16 and he's not often wrong. 17 Q. Then it's your testimony today that 18 ethernet services will not work -- or 19 etherloop -- etherloop will not work on a 20 loop in excess of 18,000 feet with a load 21 coil on it? 22 A. That we need these -- let me put it this 23 way, that we need what we ask for, okay, 24 the ability to use longer loops, that a 25 lot of services that currently don't work</p>	<p style="text-align: right;">Page 144</p> <p>1 standards, but I'm not that familiar with 2 it. 3 Q. Do you know what portion of your customers 4 are served by loops in excess of 18,000 5 feet in BellSouth's region? 6 A. No. But if I did, I'm not sure that's 7 something I could divulge. 8 Q. Why not? 9 A. It's highly sensitive, confidential. 10 Q. Loop makeup information is highly 11 sensitive, confidential? 12 A. No, the percentage of my customers that 13 are served by loops over 18,000 feet. 14 Q. Why is that confidential? 15 A. Because it gives you insight into my 16 company. 17 Q. Have you sought to price out how much it 18 would cost to remove a load coil for a 19 loop in excess of 18,000 feet pursuant to 20 the rate set forth in BellSouth's FCC 21 tariff? 22 A. I mean, it would cost whatever you charge 23 in the tariff. 24 Q. I'm asking you, have you ever calculated 25 those costs?</p>
<p style="text-align: right;">Page 143</p> <p>1 over 18,000 feet will work over 18,000 2 feet. That one of those services -- in 3 the future, that one of the technologies 4 that might make that possible is this 5 ethernet -- or etherloop service. 6 Q. How much does it cost? 7 A. How much does it cost? Are you saying to 8 the retail customer? 9 Q. To you to provide? 10 A. Obviously we haven't provisioned it yet. 11 Q. Have you budgeted it for '05? 12 A. Not that I'm aware of. 13 Q. But -- 14 A. I have not seen the -- 15 Q. How about '06? 16 A. -- marketing budget. 17 Q. How about '06? 18 A. I don't even think we have an '06 budget. 19 Only your company would have the resources 20 to prepare budgets several years in 21 advance 22 Q. Do you aware of any industry standards of 23 when load coils should be placed or 24 removed? 25 A. I believe there are some industry</p>	<p style="text-align: right;">Page 145</p> <p>1 A. I haven't personally researched that, no. 2 Q. Has anyone in your company? 3 A. I don't know. 4 Q. What is a load coil? 5 A. A load coil is a coil and -- typically 6 around 18,000 feet, and it's placed on the 7 line to improve the capacity of the line. 8 It allows voice service, but it would 9 impede other services beyond that 10 Q. In all instances? 11 A. In all instances, would it harm the 12 quality? That's my understanding of it, 13 yes 14 Q. What's a bridge tap? 15 A. A bridge tap is a connection of a -- 16 usually a lateral to the same copper that, 17 again, has the same effect. It allows for 18 lateral voice service to be redirected out 19 on some kind of a lateral route to a 20 subdivision, for example. It would allow 21 for that alternate location, but it also 22 has the effect of impeding other types of 23 services on the same copper loop if such 24 loop were to be deployed for xDSL or other 25 similar services.</p>

Page 146	Page 148
<p>1 Q. Do you know what the industry standard is 2 regarding when bridge taps should be 3 removed to provide xDSL services? 4 A. When bridge taps should be removed? I'm 5 probably not the best expert on that. I 6 know that -- I know that they're 7 routinely removed over 6,000 feet and 8 sometimes people also require that they be 9 removed on shorter lengths. 10 Q Do you know what BellSouth's proposal is 11 in this arbitration? 12 A Yes 13 Q What is it? 14 A. That we would pay for the removal of 15 bridge taps at -- I believe you may have 16 conceded that we would not pay over 6,000 17 feet, but under 6,000 feet that we would 18 pay some kind of tariffed rate for that, 19 for line conditioning. 20 Q Do you know if there's any industry 21 collaborative that has set forth the 22 guidelines as to when BellSouth will 23 remove bridge taps? 24 A. I know there are a lot of collaboratives. 25 Our company's not first, I'll admit, the</p>	<p>1 A. No. 2 MR MEZA: All right. It's a good 3 stopping point for today. 4 (THE DEPOSITION CONCLUDED AT 5:14 P.M) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 147	Page 149
<p>1 industry leader in DSL, so I can't say for 2 sure exactly where those collaboratives 3 have left off in terms of when BellSouth 4 would remove bridge taps, what kind of 5 commitment they've been willing to make in 6 that other collaborative process 7 Q So the answer to my question is, no, you 8 don't know? You don't know if -- 9 A I know that there's collaboratives. I 10 mean, my answer is what it was 11 Q. Well, in all due respect, your answer was 12 non-responsive, so let me ask my question 13 again. 14 Do you know if an industry 15 collaborative has set forth guidelines as 16 to when BellSouth will remove -- or should 17 remove bridge taps? 18 A. I don't know. 19 Q. Do you know what percentage of BellSouth's 20 network region-wide contains bridge taps 21 between 2,000 -- 2,000 and 6,000 feet? 22 A. No. 23 Q. Do you know what percentage of your 24 customers have bridge taps on their lines 25 under 6,000 feet?</p>	<p>1 ERRATA SHEET 2 3 Case name: In the Matter of 4 5 Joint Petition NewSouth 6 Communications for 7 Arbitration with BellSouth 8 9 Deponent: James C. Falvey, Volume I 10 11 Date: 12 13 PAGE LINE READS SHOULD READ 14 / / / 15 / / / 16 / / / 17 / / / 18 / / / 19 / / / 20 / / / 21 / / / 22 / / / 23 / / / 24 / / / 25 / / /</p>

<p>1 SIGNATURE</p> <p>2 I, James C Falvey, do hereby state under</p> <p>3 oath that I have read the above and</p> <p>4 foregoing deposition in its entirety and</p> <p>5 that the same is a full, true and correct</p> <p>6 transcript of my testimony</p> <p>7 Signature is subject to corrections on</p> <p>8 attached errata sheet, if any</p> <p>9</p> <p>10 James C Falvey</p> <p>11</p> <p>12 State of</p> <p>13 County of</p> <p>14 Sworn to and subscribed before me this</p> <p>15 day of , 20</p> <p>16</p> <p>17 Notary Public</p> <p>18 My commission expires</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 150</p>	
<p>1 CERTIFICATE</p> <p>2 State of North Carolina</p> <p>3 County of Hamett</p> <p>4 I, Nicole Ball Fleming, a notary public in</p> <p>5 and for the State of North Carolina, do</p> <p>6 hereby certify that there came before me</p> <p>7 on the 15th day of December, 2004, the</p> <p>8 person hereinbefore named, who was by me</p> <p>9 duly sworn to testify to the truth and</p> <p>10 nothing but the truth of his knowledge</p> <p>11 concerning the matters in controversy in</p> <p>12 this cause, that the witness was thereupon</p> <p>13 examined under oath, the examination</p> <p>14 reduced to typewriting by myself, and the</p> <p>15 deposition is a true and accurate</p> <p>16 transcription of the testimony given by</p> <p>17 the witness</p> <p>18 I further certify that I am not counsel</p> <p>19 for, nor in the employment of any of the</p> <p>20 parties to this action, that I am not</p> <p>21 related by blood or marriage to any of the</p> <p>22 parties, nor am I interested, either</p> <p>23 directly or indirectly, in the results of</p> <p>24 this action</p> <p>25 In witness whereof, I have hereto set my</p> <p> hand and affixed my official notarial</p> <p> seal, this the 30th day of December,</p> <p> 2004</p> <p> Nicole Ball Fleming</p> <p> Notary Public</p> <p> My commission expires 4/30/05</p>	<p>Page 151</p>	

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BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-772, Sub 8

Docket No. P-913, Sub 5

Docket No. P-989, Sub 3

Docket No. P-824, Sub 6

Docket No. P-1202, Sub 4

COPY

In the Matter of)
)
Joint Petition NewSouth)
Communications Corp., et al. for)
Arbitration with BellSouth)
Telecommunications, Inc.)

Raleigh, North Carolina
Thursday, December 16, 2004
Deposition of JAMES C. FALVEY,
VOLUME II

a witness herein, called for
examination by counsel for BellSouth, in
the above-entitled action, pursuant to
Notice, the witness being duly sworn by
Nicole Ball Fleming, Court Reporter and
Notary Public in and for the State of
North Carolina, taken at the offices of
Parker Poe Adams & Bernstein, 150
Fayetteville Street Mall, Suite 1400,
Raleigh, North Carolina, beginning at 9:13
a.m., on Thursday, December 16, 2004, such
proceedings being taken stenographically
by Nicole Ball Fleming.

<p style="text-align: right;">Page 153</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 On behalf of the Joint Petitioners</p> <p>4</p> <p>5 Henry C. Campen, Jr.</p> <p>6 Parker, Poe, Adams & Bernstein</p> <p>7 150 Fayetteville Street Mall</p> <p>8 Suite 1400</p> <p>9 Raleigh, NC 27601</p> <p>10</p> <p>11</p> <p>12</p> <p>13 On behalf of BellSouth</p> <p>14</p> <p>15 Jim Meza</p> <p>16 Robert Culpepper</p> <p>17 BellSouth Legal Department</p> <p>18 675 West Peachtree Street, NE</p> <p>19 Suite 4300</p> <p>20 Atlanta, GA 30375</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 155</p> <p>1 STIPULATIONS</p> <p>2 Prior to examination of the witness,</p> <p>3 counsel for the parties stipulated and</p> <p>4 agreed as follows:</p> <p>5 1. Said deposition shall be taken for</p> <p>6 the purpose of discovery or for use as</p> <p>7 evidence in the above-entitled action or</p> <p>8 for both purposes, as permitted by the</p> <p>9 applicable rules of civil procedure.</p> <p>10 2. Any objections of any party hereto as</p> <p>11 to Notice of the taking of said deposition</p> <p>12 or as to the time and place thereof or as</p> <p>13 to the competency of the person before</p> <p>14 whom the same shall be taken are hereby</p> <p>15 waived.</p> <p>16 3. Objection to questions and motions to</p> <p>17 strike answers need not be made during the</p> <p>18 taking of this deposition, but may be made</p> <p>19 for the first time during the progress of</p> <p>20 the trial of this case, or at any pretrial</p> <p>21 hearing held before the Judge for the</p> <p>22 purpose of ruling thereon or at any other</p> <p>23 hearing of said case at which said</p> <p>24 deposition might be used, except that an</p> <p>25 objection as to the form of a question</p> <p>must be made at the time such question is</p> <p>asked or objection is waived as to the</p> <p>form of the question.</p> <p>4 That all formalities and requirements</p> <p>of the Statute with respect to any</p> <p>formalities not herein expressly waived</p> <p>are hereby waived, especially including</p> <p>the right to move for the rejection of</p> <p>this deposition before trial for any</p> <p>irregularities in the taking of the same,</p> <p>either in whole or in part or for any</p> <p>other cause.</p> <p>5 That the sealed original transcript</p> <p>of this deposition shall be mailed</p> <p>first-class postage or hand-delivered to</p> <p>the party taking the deposition or its</p> <p>attorney for preservation and delivery to</p> <p>the Court, if and when necessary.</p>
<p style="text-align: right;">Page 154</p> <p>1 INDEX TO EXAMINATIONS & EXHIBITS</p> <p>2 Examination Page</p> <p>3 Continued Direct by Mr. Meza 156</p> <p>4 by Mr. Culpepper 231</p> <p>5</p> <p>6 ---</p> <p>7</p> <p>8 Deposition Exhibit Page</p> <p>9</p> <p>10 18 260</p> <p>11</p> <p>12 19 261</p> <p>13</p> <p>14 20 262</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 156</p> <p>1 JAMES C. FALVEY,</p> <p>2 having been duly sworn,</p> <p>3 testified as follows:</p> <p>4 CONTINUED DIRECT EXAMINATION</p> <p>5 BY MR. MEZA:</p> <p>6 Q. Mr. Falvey, what is an EEL?</p> <p>7 A. An EEL is an enhanced extended link, which</p> <p>8 is a facility that extends from a CLEC's</p> <p>9 collo presence and you extend transport to</p> <p>10 a second office where the CLEC has no</p> <p>11 collo presence. And at that point, the</p> <p>12 transport is combined with a loop serving</p> <p>13 an end user, typically out of that office.</p> <p>14 Q. What does Xspedius use EELs for?</p> <p>15 A. We use the EEL to serve our integrated T-1</p> <p>16 customer. That's kind of our primary</p> <p>17 product. And so we would use it for the</p> <p>18 integrated T customer or a local long</p> <p>19 distance customer.</p> <p>20 Q. And how are EELs priced?</p> <p>21 A. EELs are priced at TELRIC rates.</p> <p>22 Q. Would it be fair to say that an EEL is a</p> <p>23 special access circuit that is priced at</p> <p>24 TELRIC?</p> <p>25 A. Specialized circuit that's priced at</p>

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1 TELRIC?
2 Q. Yes. What are EEL eligibility criteria,
3 if you know?
4 A. EEL eligibility criteria are something
5 that was cooked up to limit the use of
6 EELs by CLECs.
7 Q. Do you know if there are any limitations
8 on a CLEC's use of EELs?
9 A. Yes.
10 Q. What are they?
11 A. Well, currently, there's this floccular
12 regime that the commission signed off
13 on --
14 THE WITNESS: Good luck with that
15 one.
16 A. -- where you have a series of tests, and
17 you must meet one of the tests in order to
18 ensure that your EEL is -- has a certain
19 amount of local usage on it.
20 The ILECs made this argument that
21 the Telecom Act is all about only local
22 competition, and so the FCC decided to put
23 these usage restrictions in place. So
24 there's these safe harbors. If you meet
25 the safe harbors or get a waiver from the

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1 FCC, then you can use the EEL for certain
2 purposes.
3 Q. So would it be fair to say that there's a
4 general prohibition against using EELs for
5 non-local purposes?
6 A. I wouldn't say it that way, because what
7 -- the restrictions allow is the usage
8 for a certain amount of local and then
9 other combined with it, but you could not
10 use it, I would agree, for purely
11 non-local purposes.
12 Q. And --
13 A. Unless -- And this is why -- you kind of
14 cut my answer into something different.
15 If you own the customer and if you
16 provide all of the customer's local
17 services, that is one of the safe
18 harbors. In addition, there's an FCC
19 waiver process.
20 Q. What criteria must a CLEC comply with
21 pursuant to these criteria?
22 A. Well, the first -- there's three tests.
23 The first one is that you own the
24 customer's -- all of the customer's local
25 service.

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1 And the second two apply different
2 usage-based tests, which I could not begin
3 to -- to repeat off the top of my head,
4 but they focus on a certain amount of
5 local usage on the T-1 line.
6 Q. Are you aware of any certification that
7 the CLEC must perform?
8 A. Yes.
9 Q. What is that?
10 A. Well, there's a certification that the
11 ILECs request. They won't give you an EEL
12 unless you sign this certification, and
13 you're supposed to say which test applies.
14 Q. Does Xspedius do that?
15 A. Yes.
16 Q. Do you agree that an EEL contains a UNE
17 loop?
18 A. Yes.
19 Q. Would you agree that a loop must terminate
20 at an end-user's premises?
21 A. No.
22 Q. Why not?
23 A. Must terminate at a customer's premises,
24 but not necessarily an end-user's premise.
25 Q. What's the difference between a customer

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1 and an end user?
2 A. A Customer could be MCI, and -- so then it
3 would be MCI's end user and not my end
4 user, but it would certainly be my
5 customer.
6 Q. Are you aware of any definition that
7 describes a loop as terminating at an
8 end-user's premises?
9 A. BellSouth's, but not the FCC's.
10 Q. Okay. Are there any other type of entity
11 or person that you would consider a
12 customer but not an end user?
13 A. A customer but not an end user? Could
14 have any kind of resale arrangement.
15 Q. And when you -- I don't mean to interrupt
16 you.
17 A. Sure.
18 Q. When you say "resale", are you saying
19 you're reselling your services, your
20 services independent of BellSouth, or
21 you're reselling BellSouth's wholesale
22 services?
23 A. It's my switch and -- but I may be using
24 UNEs or something to provision part of
25 the -- part of the circuit, so it's

<p style="text-align: right;">Page 161</p> <p>1 definitely my service on your -- a 2 facility that I've leased from you. 3 Q. Can you give me an example of a situation 4 where that may occur? 5 A. Well, there's the one that I just gave. 6 Under the TRO, we're told that it would be 7 great if we could buy from each other, so 8 if I'm collocated in one location and MCI 9 is not there, then I could buy a loop from 10 that location. So MCI might say, order me 11 up a loop and bring it back to me somehow, 12 meet me somewhere. And in that 13 circumstance, I would be -- it would not, 14 again, be my end user. My customer is 15 MCI. 16 Q In that situation, would you mark up the 17 price that you would charge MCI for use of 18 the BellSouth loop? 19 A. I'm not aware of any contract that we have 20 to do that, but you could certainly 21 envision a situation where -- I always 22 thought that a barter arrangement would be 23 interesting where -- we're faced with 24 this interesting, intricate web of rules 25 and regulations from the FCC, from the</p>	<p style="text-align: right;">Page 163</p> <p>1 circumstance. There could be other 2 enhanced service providers that someone 3 might try to argue is not an end user. 4 And having the word customer, which is 5 required by the FCC rules, after all, is 6 -- the definition in the FCC rules is a 7 better definition for our company. 8 Q. I'll ask my question again -- 9 A. Okay. 10 Q. -- because it was not responsive. 11 Are you aware of any instance 12 today where an Xspedius customer is also 13 not an end user? 14 A. I don't know of any specific instance, as 15 I said yesterday. I know that we do 16 resell. I know that I've signed off on 17 applications, but I'm not aware of any 18 specific resell arrangement in the 19 BellSouth region. 20 Q. Okay. Are you aware if BellSouth has 21 agreed that an ISP would be considered an 22 end user in this proceeding? 23 A. I believe that you have. 24 Q. Does that alleviate your concerns 25 regarding the definition of end user?</p>
<p style="text-align: right;">Page 162</p> <p>1 Michael Powell FCC. And so what I can 2 imagine companies doing is a barter 3 arrangement where we say, you can -- 4 we'll give you a hundred loops a year, you 5 give us a hundred loops a year. 6 And, you know, frankly, again, not 7 real world, I don't know that we've ever 8 done that, and I'm not responsible for 9 negotiating those type of contracts. 10 Q. Are you aware of any instance today where 11 MCI is purchasing a resold loop from you? 12 A. No. 13 Q. Today, are you aware of any instance where 14 an Xspedius customer is not also an end 15 user? 16 A. Like I said, any kind of resale 17 arrangement. And, you know, there's 18 another issue, which is that there are -- 19 there's a lot of debate and heat and noise 20 around whether ISPs should be end users. 21 Thankfully we've been able to keep it 22 categorized that way. But God knows 23 there's a lot of money being poured into 24 efforts to change that. And so if that 25 were to change, then that would be another</p>	<p style="text-align: right;">Page 164</p> <p>1 A. No. 2 Q. Why? 3 A. I mean, the litigation in this area is 4 prolific, starting with the Brand X case, 5 the recategorization of services into 6 different baskets. And I believe that 7 there is a concerted long-term effort, 8 heavily funded by what is -- what -- 9 almost a two hundred billion dollar LEC 10 industry by the time you add up Verizon, 11 FBC, BellSouth, Qwest, Sprint Local to 12 change the definition to make it harder 13 for us to serve internet service 14 providers. 15 Q. But BellSouth is agreeing that you can 16 serve internet service providers with 17 EELs? 18 A. Today. But there's a change of law 19 provision. There's a lot of change 20 tomorrow. And if someone said an ISP is 21 not an end user, I could still claim 22 they're a customer. And after all, bottom 23 line is the FCC says that a loop runs to a 24 customer. 25 Q. Where?</p>

<p style="text-align: right;">Page 165</p> <p>1 A. It's in -- It's in the definitions. I 2 believe it's the definition of a loop in 3 the rules. And if you also -- let's 4 leave it at that. Look at the definition 5 of a loop. 6 Q. In what rules? 7 A. I don't have the cite as I sit here today, 8 but, actually, if you give me the CFR, I 9 could find it. 10 Q. What version of the rules? 11 A. The CFR. 12 Q. What year? 13 A. What year? The most recent version. Is 14 that the CFR right there, 47 CFR? 15 MR. MEZA: Let me see it. 16 MR. CULPEPPER: Sure. That came 17 out last October. 18 (PAUSE.) 19 Q. I'm handing you an October 2003 version of 20 Section 47 of the CFR. And ask that you 21 please identify the definition of a loop 22 that you were referring to. 23 MR. MEZA: Mr. Campen, may I ask 24 what you're doing? 25 MR. CAMPEN: I'm sorry.</p>	<p style="text-align: right;">Page 167</p> <p>1 distribution frame or its equivalent and 2 an incumbent LECs' central office and the 3 loop demarcation point at an end-user 4 customer premises, including inside wire, 5 owned by the incumbent LEC. 6 The local loop network element 7 includes all features, functions, and 8 capabilities of such transmission 9 facility. Those features, functions, and 10 capabilities include, but are not limited 11 to, dark fiber, attached electronics, 12 except those electronics used for bridge 13 and advanced services, such as digital 14 subscriber line access, multiplexors, and 15 line conditioning. A local loop includes, 16 but is not limited to, DS-1, DS-3, fiber, 17 and other high-capacity loops. 18 Requirements in this section relating to 19 dark fiber are not effective until May 7th 20 of 2000. 21 Q. That reference to transmission facility 22 between a distribution frame or its 23 equivalent and an incumbent LECs' central 24 office and the loop demarcation point 25 that -- at the end-user's customer's</p>
<p style="text-align: right;">Page 166</p> <p>1 A. You've got the time, I've got the time. 2 Q. Sure We know what time your flight is. 3 A. Touche. 4 (PAUSE.) 5 A. Okay. Local loop and subloop. An 6 incumbent LEC shall provide 7 nondiscriminatory access in accordance -- 8 let me say, this is 51.319(a). 9 Q. Okay. Thank you. 10 A. An incumbent LEC shall provide 11 nondiscriminatory access in accordance 12 with Section 51.311 and Section 251(c)(3) 13 of the Act to the local loop and subloop, 14 including inside wiring owned by the 15 incumbent LEC on an unbundled basis to any 16 requesting telecommunications carrier for 17 the provision of a telecommunications 18 service. So now we need to find out, what 19 is a telecommunications service. 20 Q. Wait. Is there a definition of local loop 21 underneath that one? 22 A. There is a definition of a local loop. 23 Q. What does that say? 24 A. The local loop network element is defined 25 as a transmission facility between a</p>	<p style="text-align: right;">Page 168</p> <p>1 premises, does that give you any insight 2 into whether a loop must terminate at an 3 end-user's premises? 4 A. According to this, it has to terminate at 5 an end-user's customer premises. Yes, I 6 would agree. 7 Q. Okay. 8 A. But it doesn't have to be my end user. 9 And your definition doesn't permit 10 me to do wholesale arrangements on someone 11 else's -- that would ultimately terminate 12 at someone else's end user. 13 Q. Are you aware if the agreement allows for 14 Xspedius to resell the UNEs in compliance 15 with the law? 16 A. I would expect that it does. 17 Q. Given that provision, do you still have 18 concerns about BellSouth preventing you 19 from using the loop in a manner in which 20 is consistent with the law? 21 A. Yes. I mean -- 22 Q. And why is that? 23 A. Because of your definition of end user. 24 If you just agree to our definition, 25 then -- or something that's consistent</p>

5 (Pages 165 to 168)

<p style="text-align: right;">Page 169</p> <p>1 with the rules. We believe the rules 2 would allow us to certainly wholesale a 3 loop. I mean, read the whole underlying 4 basis of the TRO. It's all about these 5 people need to start working together, and 6 so -- meaning CLECs need to start buying 7 from each other. 8 So the general FCC policy and the 9 FCC rules would certainly allow us to 10 wholesale a UNE. This particular 11 BellSouth definition is trying to restrict 12 those FCC rights. 13 Q. Do you think it makes business sense for a 14 CLEC to purchase something from you on a 15 wholesale basis that they can 16 independently purchase directly from 17 BellSouth? 18 A. No, but the example that I gave was a 19 situation where they could not buy it from 20 BellSouth. You see, we have a limited 21 number of collocations. It's something 22 that somehow has not sunk in at the FCC. 23 And those collocations can cost up to 24 \$500,000 per collocation to establish. 25 Where you don't have a</p>	<p style="text-align: right;">Page 171</p> <p>1 Q. In your -- or does your intelligence 2 relating to the vote yesterday give you 3 any indication as to whether EEL 4 eligibility criteria was discussed? 5 MR. CAMPEN: Objection to the form 6 of the question. 7 A. My most recent knowledge, which is based 8 on some phone calls and some e-mails -- 9 and I have not had time to read the press 10 release. I will read it on the way home. 11 Based on my most recent knowledge, I can't 12 say for certain what they're going to do 13 on that issue. 14 Q. Okay. And the rules have not been issued 15 -- or the order has not been issued yet, 16 correct, relating to the final rules? 17 A. Correct. 18 Q. Has BellSouth asked to do an audit of 19 Xspedius' EELs? 20 A. Yes. 21 Q. And what was Xspedius' response? 22 A. Our response was that BellSouth needed to 23 lay a foundation for the audit. That if 24 we reached that point, we would then have 25 to agree on an independent auditor.</p>
<p style="text-align: right;">Page 170</p> <p>1 collocation, you're not in a position to 2 buy a loop. Where you do have one, you 3 are. There are restrictions on EELs that 4 do not apply to loops. So the option of 5 buying an EEL is not even there, because 6 then we run into these floccular 7 restrictions, which, by the way, are being 8 rectified by the FCC as we speak. They're 9 moving to a much simpler, more streamlined 10 test. 11 Q. And how do you know that? 12 A. Because I've read the TRO and I've been in 13 meetings. 14 Q. With who? 15 A. Commissioner Abernathy, Commissioner 16 Adelstein, the legal assistants for 17 Commissioner Copps, Commissioner -- all 18 five commissioners. I'll save time. 19 Let me just say that my most 20 recent intelligence says that they are 21 eliminating those restrictions. One never 22 knows. 23 Q. Did you read the press release that came 24 out yesterday relating to the final rules? 25 A. No.</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Where is -- Where are all the parties as 2 it relates to that request today? 3 A. BellSouth has not yet provided any 4 foundation for its EEL audit. 5 Q. How long ago did BellSouth request the 6 audit? 7 A. I don't know. 8 Q. Within the last six months? 9 A. I believe so. 10 Q. Last three months? 11 A. That, I don't know. 12 Q. Do you know what Xspedius' current 13 agreement provides for relating to EEL 14 audits? 15 A. There's a page or two relating to EEL 16 audits. 17 Q. And are those rules or provisions 18 consistent with the TRO's provisions and 19 findings relating to EEL audits? 20 A. Yes. 21 Q. So your agreement has been modified to be 22 TRO complaint? 23 A. Oh, TRO. I'm sorry, no. They are based 24 on the supplemental -- the initial orders 25 relating to EEL audits, which date back</p>

6 (Pages 169 to 172)

<p style="text-align: right;">Page 173</p> <p>1 several years, a couple of years. And 2 they have not been modified, to answer 3 your question -- 4 Q. Okay. 5 A. -- to accommodate the TRO. 6 Q. So it's based upon rules that -- The 7 provisions in your current agreement that 8 relate to EEL audits are based upon rules 9 that existed prior to the TRO? 10 A. Correct. 11 Q. Now, what is your -- what is your 12 position in this proceeding regarding what 13 type of notice BellSouth has to provide 14 regarding an EEL audit? 15 A. Those notice provisions are contained in 16 the contract. So I really am not 17 comfortable speaking about the contract, 18 unless I could have it in front of me, 19 unless I could see it. 20 Q. Do you understand that there's an issue 21 relating to the type of notice that 22 BellSouth should provide to the CLECs? 23 A. On the EEL audit? I don't know. 24 Q. I believe you filed testimony on the 25 issue, so let me refer you to --</p>	<p style="text-align: right;">Page 175</p> <p>1 A. It should certainly include the supporting 2 documentation. It needs to identify the 3 circuits where you believe there's 4 noncompliance and the basis for the 5 noncompliance on those specific circuits. 6 In other words, it can't be a fishing 7 expedition. 8 Q. Let's presume that BellSouth provides you 9 with the identification of circuits that 10 it believes are not in compliance. 11 Is it your position that any such 12 audit would be limited to only those 13 circuits? 14 A. They would have to deliver the circuits 15 and the basis for believing that those 16 particular circuits are not in compliance, 17 and then, yes, that would certainly not 18 enable you to take an audit beyond those 19 circuits. That was the position of the 20 Georgia Commission. 21 Q. What about the North Carolina Commission? 22 A. I'm not familiar with the details of the 23 North Carolina Commission's EEL audit 24 orders. 25 Q. Are you familiar with any finding that</p>
<p style="text-align: right;">Page 174</p> <p>1 A. Okay. 2 Q. And if there's not an issue, that would be 3 great. 4 A. Okay. 5 Q. It's Issue 51, which is starting on page 6 77 of your direct testimony, Exhibit 1. 7 A. Okay. 8 Q. See if reading this helps you to recollect 9 whether this is an issue. 10 A. Well, when you said the type of notice, I 11 guess I'm -- and what went through my mind 12 was whether the notice was issued to the 13 right person. And I believe that it was 14 issued to the right person. That's why 15 when you said the type of notice, 16 certainly the content of the notice that 17 -- as I said a minute ago, the foundation 18 for an audit must be included in the 19 notice. And so there's certainly an issue 20 that BellSouth did not provide an adequate 21 foundation for the audit. 22 Q. I'm asking for the purpose of this 23 agreement, what are you specifically 24 asking this Commission to force BellSouth 25 to provide in a notice?</p>	<p style="text-align: right;">Page 176</p> <p>1 they've made? 2 A. I -- In general, I know that the North 3 Carolina Commission's order was less 4 favorable -- and I might add -- to 5 NuVox, not -- this was not an Xspedius 6 proceeding. I don't track other people's 7 proceedings with the diligence that I 8 track our own proceedings. But it's -- 9 my general understanding is that it was 10 not as favorable to NuVox as the Georgia 11 Commission order. 12 Q. And the Georgia Commission that you're 13 referring to is limited to NuVox, as well, 14 or NewSouth; is that correct? 15 A. To my knowledge, that was the -- that was 16 the basis -- that it was -- there's 17 NuVox -- it was a NuVox case. 18 Q. Do you follow orders that are less 19 favorable to CLECs less consistently than 20 those that are favorable? 21 A. An order's an order, and we follow all 22 commission orders. No one from BellSouth 23 has raised the North Carolina order with 24 Xspedius. With the exception -- 25 Q. Are you --</p>

<p style="text-align: right;">Page 177</p> <p>1 A. -- of yourself, I mean. Let me say that. 2 Q. Are you involved in those discussions with 3 BellSouth regarding the Xspedius audit? 4 A. There hasn't been a single discussion with 5 BellSouth about the audits -- EEL audits. 6 No one at BellSouth has ever picked up the 7 phone and called me to talk about it. 8 It's all been done through written 9 correspondence. 10 Q. Are you the contact person for the EEL 11 audit? 12 A. I am the contact person. 13 Q. And did you receive the notice? 14 A. I did receive the notice. 15 Q. And who did you refer it to? 16 A. There's not very many people to refer it 17 to in my company, so -- 18 Q. So you're handling it? 19 A. I'm handling it. 20 Q. Okay. Have you attempted to call 21 BellSouth? 22 A. No, not on an EEL audit. I did respond in 23 writing. 24 Q. Who sent you the letter on behalf of 25 BellSouth?</p>	<p style="text-align: right;">Page 179</p> <p>1 believe, the first batch of 40, then, 2 okay, at that point, there would be 3 grounds, we'll go to another step. But 4 we're going to start with a limited -- a 5 limited group of circuits. 6 Q. And, again, you don't know what the North 7 Carolina Commission ruled on the same 8 issue, do you? 9 A. Not in detail. I do know that it was less 10 favorable to the CLEC. And I think it was 11 NuVox. I know DeltaCom has been caught up 12 in this, also. 13 Q. Does the FCC and the TRO require BellSouth 14 to identify circuits that it believes are 15 not compliant? 16 A. Well, I don't know about in the TRO, but 17 we believe it's required in the prior 18 orders that have been -- that are the 19 basis for the interconnection agreement. 20 Q. Talking today, on a going-forward basis -- 21 I presume you're not suggesting that the 22 old rules apply? 23 A. Yeah, the TRO has not been incorporated 24 into our contract. 25 Q. On a going -- For this new agreement --</p>
<p style="text-align: right;">Page 178</p> <p>1 A. Pat Finley. 2 Q. And you've not attempted to call 3 Mr. Finley? 4 A. No. I wrote him a letter back. 5 Q. So just to make sure I understand. Your 6 position is that you want BellSouth to 7 identify all the circuits that it believes 8 are not in compliance. And assuming you 9 agree that there is sufficient 10 documentation and cause to support an 11 audit, the audit would be limited to those 12 circuits that are identified? 13 A. Correct, that's our position. 14 Q. Is there a possibility in your mind that 15 there may be additional circuits that are 16 not in compliance, that BellSouth may not 17 have sufficient grounds in your mind to 18 provide for the identification of those 19 circuits in the audit -- in the notice? 20 Excuse me. 21 A. If you don't have grounds, then you 22 couldn't commence an audit on those 23 circuits, that's -- the Georgia 24 Commission was very clear. They actually 25 said, if you find violations in, I</p>	<p style="text-align: right;">Page 180</p> <p>1 A. Uh-huh. 2 Q. -- are you suggesting that the old 3 eligibility rules should be incorporated 4 here or that the TRO rules? 5 A. Today? 6 Q. Yeah. 7 A. Today, we'd have to take -- it may well 8 be the old rules. And the reason is that 9 the TRO decision is being revisited as we 10 speak, okay, in the final rules. And so 11 if we go to a hearing today or in early 12 January, as we are, if the Commission were 13 to issue an order, very shortly 14 thereafter, it is quite -- it is possible 15 that we would not have had an opportunity 16 to negotiate to incorporate the content of 17 the final rules. 18 Q. To date -- 19 A. Yes. 20 Q. -- have the parties negotiated the EEL 21 eligibility requirements as set forth in 22 the TRO? 23 A. We may have. I'd have to go back and look 24 at that section in which -- and if we 25 have, if we've negotiated something that's</p>

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1 in the negotiated part of the contract --
2 but -- but I'm just not confident as I
3 sit here that that issue isn't caught up
4 in the revisitation of that attachment 2
5 in that -- that will come out of the final
6 rules.
7 Q. So are you suggesting that no issue that
8 is currently teed up for arbitration that
9 may be impacted by the final rules should
10 go forward?
11 A. Certainly the parties -- we have an
12 agreement not to incorporate them --
13 those issues into our current agreement.
14 We have got to take the time to negotiate
15 anything that comes out of the final
16 rules. If we could negotiate and
17 immediately determine, look, we agreed on
18 this before, it hasn't changed, we're
19 fine, we'll move on, then -- then --
20 then at that point we could incorporate it
21 into this contract.
22 See, there's a distinction I think
23 between negotiated and an arbitrated
24 provision. In addition, we may find that
25 the final rules do not revisit certain

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1 agreement with BellSouth to make that
2 happen, but it's my understanding that
3 BellSouth has not been willing to agree to
4 place all of our issues into the generic.
5 And there's the further
6 complication that many of the issues that
7 are currently teed up in the generic have
8 been resolved by the parties in this
9 proceeding.
10 So you said you were confused a
11 minute ago. It's enormously complex, but
12 I'm confident that our capable attorneys
13 can work it out.
14 Q. And you've stated that there was an
15 agreement not to invoke change of law.
16 What is the basis for that statement?
17 A. That was a filing made with the North
18 Carolina Commission signed by both parties
19 -- by attorneys from both parties that
20 said that -- that the parties had agreed
21 not to amend the current agreement with
22 respect to USTA II and its progeny in that
23 the regulatory framework surrounding the
24 USTA II issues would be simply
25 incorporated into the new agreement.

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1 issues, in which case there would not be
2 reason to renegotiate those issues.
3 Q. Well, I'm confused. Are you suggesting
4 that this arbitration should be delayed?
5 A. No.
6 Q. So we're going to go forward in an
7 arbitration proceeding based upon the
8 rules that we know that exist today;
9 correct?
10 A. Based upon those rules that are
11 sufficiently old that we've had a chance
12 to negotiate. The FCC order is -- for
13 the final rules is published and effective
14 the day before we go to hearing, it would
15 be enormous waste of the Commission's and
16 parties' time and resources to arbitrate
17 that order on the hearing -- in the
18 hearing the next day.
19 Q. Would the Joint -- or would Xspedius be
20 willing to address all issues that may be
21 at issue in this arbitration in a generic
22 context with all other CLECs instead of
23 individually in an arbitration
24 proceeding?
25 A. We're -- We are trying to reach an

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1 Q. It's your understanding that whatever --
2 whatever was filed with North Carolina
3 encompasses the final rules?
4 A. I don't understand that question
5 Q. Okay. The agreement that's memorialized
6 in a North Carolina filing, is it your
7 interpretation of that agreement that --
8 A. What agreement, if I can interrupt you?
9 Q. I'm sorry, the motion --
10 A. Okay.
11 Q. -- that you --
12 A. Now I understand.
13 Q. -- referenced.
14 A. Yes.
15 Q. Is it your interpretation of that motion
16 that the agreement not to invoke change of
17 law encompasses changes resulting from the
18 FCC final rules?
19 A. Correct.
20 Q. And what is that based on?
21 A. Well, your attorneys signed the pleading,
22 and so we believe that you're good for
23 it. You filed it formally with the North
24 Carolina Commission, and so that --
25 that's about as binding as it gets.

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<p>1 Q. And it's based upon your reading of the 2 language in that motion? 3 A. I think anybody's reading of the language. 4 Q. Would you agree with me that BellSouth 5 sent you a -- sent Xspedius a change of 6 law letter regarding the TRO? 7 A. Yes. 8 Q. Would you agree with me that BellSouth 9 sent Xspedius a change of law letter 10 relating to USTA II? 11 A. It's possible. I have five LECs and I get 12 a lot of letters. It's possible. That's 13 as far as that's going to go. 14 Q. You don't have any facts to doubts that 15 BellSouth sent it to you? 16 A. No, I mean -- yeah. I don't want to say 17 it's likely. It's possible. 18 Q. What about for the Interim Rules Order? 19 A. Again, it's possible. 20 Q. Who, in your opinion, should perform an 21 EEL audit? 22 A. An independent auditor agreed to by the 23 parties. 24 Q. Does the TRO require there to be agreement 25 on an auditor?</p>	<p>1 documents in front of you, you say -- 2 similar to our discussion yesterday. The 3 earlier order said black, and this one 4 says white; okay? The earlier order said 5 X on such and such a topic. The new order 6 doesn't address such and such topic. And 7 then I suppose we'd have a dispute over, 8 potentially, whether that additional 9 content from the prior order was still 10 valid. 11 But it sure makes sense to me that 12 the parties would agree; right? I mean, a 13 lot of this is common sense. If I'm a 14 commissioner or a commission staff member, 15 I'm just going to say, you know, this is 16 supposed to be an independent auditor, and 17 we're trying to create a fair process. So 18 as -- for example, in the AAA 19 arbitration, there should be an agreement 20 of the parties that we're dealing with 21 someone who's independent. 22 Q. What is your understanding of AICPA 23 standard? 24 A. That is a -- as I understand it, it's 25 like an auditing association and -- a</p>
Page 186	Page 188
<p>1 A. I'd have to review the TRO provisions 2 relating to EELs and get some sense as to 3 what they say. I mean, I would expect 4 that they certainly do require an 5 independent auditor. 6 Q. Do they require agreement on the auditor, 7 that was my question? 8 A. Oh. I don't know. I'd have to look at 9 the provisions, but they speak for 10 themselves. 11 Q. You believe that the TRO speaks for 12 itself? 13 A. Yes. In the earlier supplemental orders 14 and so on, the TRO made reference to our 15 implicitly -- encapsulated some of the 16 Commission's prior orders, then it's 17 possible that there's some previous 18 provisions that still would be valid. 19 Q. Let me make sure I understand you. You 20 can incorporate prior commission orders by 21 implicit incorporation? 22 A. It just depends. 23 Q. How does that work? 24 A. Well, I mean, you'd have to -- this is 25 what lawyers do; right? You put the two</p>	<p>1 society, an association of independent 2 auditors. 3 Q. Do you know if one of the standards 4 included in the -- by this association is 5 that the auditor be independent? 6 A. I would think so, but I don't know for 7 sure. I haven't read those standards. 8 Q. Assume that that is one of the standards. 9 Why isn't the selection of an auditor that 10 complies with the standards and, thus, is 11 independent sufficient? 12 A. Well, let me give you an example. There's 13 an audit issued -- instituted by 14 BellSouth under a provision that 15 explicitly says that the parties must 16 agree to who the auditor is. The parties 17 must agree to who the auditor is. 18 BellSouth sent a letter. There 19 was no agreement by Xspedius to the 20 audit. There was no phone call from 21 BellSouth to say, hey, we need to agree on 22 the identity of the auditor. 23 The next contact I got after the 24 letter was never a phone call from 25 BellSouth but a call from the auditor that</p>

10 (Pages 185 to 188)

<p style="text-align: right;">Page 189</p> <p>1 said, hey, I'm ready to do the audit. 2 That guy's not independent, I'll tell 3 you. He may meet the standards and so on, 4 but he didn't read the contract that he 5 was performing the audit under. He didn't 6 read the section that says it has to be 7 mutually agreed upon by the parties. He 8 didn't take the simplest initial step to 9 say, oh, BellSouth, have you met the 10 provisions of this contract? Has Xspedius 11 agreed that I am an independent auditor? 12 So there's an individual who was with 13 Deloitte & Touche, which normally -- you 14 know, hey -- you think, hey, that's a -- 15 they call it the Final Four now, the Final 16 Four accounting team -- firm. And on its 17 face, you know, you'd think this guy would 18 meet the standard, but clearly that's an 19 individual who's not qualified to conduct 20 an audit. 21 Q. Who contacted you from Deloitte? 22 A. I don't know the guy's name. 23 Q. How long ago did he contact you? 24 A. Twice in the last two to three weeks. 25 Q. And it's your interpretation of your</p>	<p style="text-align: right;">Page 191</p> <p>1 clearly as to whether BellSouth had made 2 the -- laid the proper foundation for him 3 to take steps to conduct the audit. 4 Q. And you base that upon the fact that he 5 called you to perform the audit prior to 6 seeing if you agreed to the audit; is that 7 right? 8 A. Prior to finding out whether Xspedius had 9 agreed, whether the audit was consistent 10 with the contract, in all regards, whether 11 Xspedius had agreed that he was qualified 12 to do the audit. 13 Q. So not only do you have to agree on the 14 auditor, you have to agree that the person 15 or the firm is qualified to do the audit? 16 A. No. Actually, what I was saying, you 17 agree on the auditor -- but what I mean by 18 that is that the foundation had been laid 19 in the form of a BellSouth/Xspedius 20 agreement for him to proceed. I mean, 21 it's just highly inappropriate for the 22 auditor to be working hand in glove with 23 BellSouth to be making not a contact to 24 say, hi -- well, he shouldn't have been 25 making any contact, okay, until he had a</p>
<p style="text-align: right;">Page 190</p> <p>1 agreement that -- your old agreement -- 2 well, when I say "old", current agreement 3 -- that there needs to be agreement on 4 the select or -- or there needs to be 5 agreement on the auditor? 6 A. Mutually agreed, yes. This is a PIU/PLU 7 audit, explicit in the contract. 8 Q. And that's different than an EEL audit; 9 correct? 10 A. Correct. 11 Q. But they're not totally analogous? 12 A. Sounds pretty analogous. I mean, they're 13 addressed in different parts of the 14 contract. 15 Q. And are there different provisions in the 16 contract? 17 A. Yes. 18 Q. So it's your interpretation that the 19 person who called you from Deloitte to 20 perform a PIU audit was not independent; 21 is that correct? 22 A. Yes. Working hand in glove with BellSouth 23 and never read the contract that gave him 24 the charter to do the audit and never made 25 the most basic inquiry to BellSouth</p>	<p style="text-align: right;">Page 192</p> <p>1 charter from both companies. Instead, his 2 tenor was, when can I show up and start 3 auditing? He might as well have been 4 working for BellSouth. 5 Q. Do you think the purpose of an audit is to 6 interpret a contract? 7 A. The purpose of an audit is to audit 8 consistent with the -- as I said before, 9 the charter in the contract. 10 So you better understand your 11 charter. You better understand the 12 contract. And to that extent, yes. 13 And, in fact, there's going to be 14 two or three -- four, five paragraphs, 15 sometimes several pages in the contract 16 that explains what the audit is about, so 17 at the end of the day, yes. 18 Q. What do you know about CNAM? 19 A. I know a certain amount about CNAM. 20 Q. Do you know how it works? 21 A. I just -- I know that it's -- that it's 22 an SS7 functionality that allows Caller ID 23 to work. 24 Q. An Xspedius caller calls BellSouth; all 25 right?</p>

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<p>1 A. Okay.</p> <p>2 Q. And the BellSouth caller has Caller ID.</p> <p>3 A. Yes.</p> <p>4 Q. Can you explain to me how the dipping of a</p> <p>5 CNAM database would work in that call</p> <p>6 flow?</p> <p>7 A. It's my understanding that if the -- if</p> <p>8 we use a third-party agency like VeriSign</p> <p>9 and the call goes to BellSouth and</p> <p>10 BellSouth hasn't worked out an arrangement</p> <p>11 with VeriSign, then the call will not get</p> <p>12 dipped, that it won't -- and the CNAM will</p> <p>13 not transfer with the call through the SS7</p> <p>14 link, the SS7 information that flows with</p> <p>15 the call, and that the BellSouth customer</p> <p>16 will not receive Caller ID for the</p> <p>17 Xspedius -- from the Xspedius customer.</p> <p>18 Q. Do you know if Xspedius has its own</p> <p>19 database?</p> <p>20 A. I believe we use a third party.</p> <p>21 Q. Which ones?</p> <p>22 A. I want to say VeriSign, but we -- it</p> <p>23 could be another one. We compete</p> <p>24 everything out, and I can't keep up.</p> <p>25 Q. Do you know if Xspedius is -- submitted</p>	<p>1 not --</p> <p>2 Q. Do you store consumer information --</p> <p>3 A. Could you rephrase the question?</p> <p>4 Q. -- in Sprint United's database?</p> <p>5 A. We're only in one Sprint market, in Las</p> <p>6 Vegas, and so I would expect it would be a</p> <p>7 similar arrangement with -- where the</p> <p>8 information would be stored with the</p> <p>9 third-party provider.</p> <p>10 Q. Do you have any actual knowledge as to</p> <p>11 whether or not Xspedius is storing</p> <p>12 information with BellSouth, VeriSign, or</p> <p>13 Sprint United?</p> <p>14 A. No.</p> <p>15 Q. Okay.</p> <p>16 A. VeriSign, again -- I mean, I don't even</p> <p>17 know if they're our SS7 provider.</p> <p>18 Q. Do you know if BellSouth has a contract to</p> <p>19 dip your third-party provider, whoever</p> <p>20 that is? Do you know?</p> <p>21 A. No. I would like to think that you do, so</p> <p>22 that we can make this work, because our</p> <p>23 customers -- what I know is my customers</p> <p>24 call me and they say, my mother used to</p> <p>25 get my Caller ID when I called her from</p>
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<p>1 its information to the BellSouth database?</p> <p>2 A. I don't, no.</p> <p>3 Q. What about VeriSign?</p> <p>4 A. Again, there would have to be some kind of</p> <p>5 an arrangement, although I don't know that</p> <p>6 they would have to submit it to the</p> <p>7 database. You could dip it in their</p> <p>8 database.</p> <p>9 Q. I'm asking, do you store your information</p> <p>10 in BellSouth's database?</p> <p>11 A. I don't know the answer to that.</p> <p>12 Q. What about VeriSign's?</p> <p>13 A. You'd have to ask VeriSign.</p> <p>14 Q. You don't know?</p> <p>15 A. Oh, whether we --</p> <p>16 Q. Yeah.</p> <p>17 A. -- we store it in VeriSign's?</p> <p>18 Q. Yeah.</p> <p>19 A. We store it with the third-party provider.</p> <p>20 Q. Who is?</p> <p>21 A. I don't know. That's asked and answered.</p> <p>22 Q. That's a problem, deposing a lawyer.</p> <p>23 A. I'm sorry.</p> <p>24 Q. What about Sprint United, their database?</p> <p>25 A. Okay, what about Sprint United? I'm</p>	<p>1 work and now she won't answer the phone.</p> <p>2 That's how this became an issue with our</p> <p>3 company. And we're trying to work out</p> <p>4 some language in this contract so mom</p> <p>5 won't -- will answer the phone when her</p> <p>6 daughter calls.</p> <p>7 Q. And is mom a BellSouth customer?</p> <p>8 A. Yes.</p> <p>9 Q. And the originator of the call was from a</p> <p>10 person in BellSouth's region?</p> <p>11 A. Her daughter at work, hypothetically,</p> <p>12 working for Xspedius.</p> <p>13 Q. Oh, this is all hypothetical.</p> <p>14 A. It's hypothetical in terms of the mom and</p> <p>15 the daughter, but not in terms of the fact</p> <p>16 that we've had multiple, multiple</p> <p>17 complaints. It's been a big problem for</p> <p>18 our company, that BellSouth Caller ID</p> <p>19 isn't working when an Xspedius customer</p> <p>20 calls a BellSouth customer and there's a</p> <p>21 third-party provider involved for dipping</p> <p>22 and providing the CNAM, making sure the</p> <p>23 CNAM transmits.</p> <p>24 Q. Presume with me that Xspedius does, in</p> <p>25 fact, store it's information in</p>

<p style="text-align: right;">Page 197</p> <p>1 BellSouth's database; okay?</p> <p>2 A. Uh-huh.</p> <p>3 Q. In that situation, would the Caller ID</p> <p>4 information be transmitted?</p> <p>5 A. Do we have an arrangement with you to</p> <p>6 dip -- to dip into that database?</p> <p>7 Q. I'm asking you if you store information in</p> <p>8 the BellSouth database --</p> <p>9 A. Well, let's say it's stored, but we don't</p> <p>10 have a contract where we pay you to do the</p> <p>11 dip, then I wouldn't expect you to do the</p> <p>12 dip. And if I have a contract with</p> <p>13 another provider to do the dip that is</p> <p>14 charging me a better rate, then I wouldn't</p> <p>15 want to do a contract with you. You know,</p> <p>16 let's say they do a dip for a dollar or 50</p> <p>17 cents and you're doing the dip for \$2.50.</p> <p>18 We've got to compete; right? We've got to</p> <p>19 have those third-party providers able to</p> <p>20 do -- to give me a better deal. Our</p> <p>21 company's very cost conscious.</p> <p>22 Q. Do you know -- So let me make sure I</p> <p>23 understand this. You're saying that in</p> <p>24 order for a BellSouth switch to perform</p> <p>25 the dip, that you need to have a contract</p>	<p style="text-align: right;">Page 199</p> <p>1 A. That's my understanding.</p> <p>2 Q. All right. So BellSouth has a</p> <p>3 contract -- or BellSouth is dipping the</p> <p>4 database third-party provider that</p> <p>5 resides -- or holds your information.</p> <p>6 A. Uh-huh.</p> <p>7 Q. All right. Will Caller ID information</p> <p>8 work in that instance?</p> <p>9 A. Yes.</p> <p>10 Q. Do you believe BellSouth has an obligation</p> <p>11 to make sure that every single instance</p> <p>12 where a customer has Caller ID, that</p> <p>13 Caller ID information appear, regardless</p> <p>14 of the origin of the call?</p> <p>15 A. I think it would certainly be in the</p> <p>16 public interest for BellSouth to do that.</p> <p>17 Clearly BellSouth doesn't agree, and we're</p> <p>18 asking the Commission to create a world</p> <p>19 where everybody gets the Caller ID, even</p> <p>20 if they decide we don't want to pay higher</p> <p>21 rates with BellSouth for this service.</p> <p>22 We want to compete, have competition, and</p> <p>23 have it done by someone else.</p> <p>24 Q. You've told me that Xspedius has its own</p> <p>25 switches; correct?</p>
<p style="text-align: right;">Page 198</p> <p>1 with BellSouth to pay for that?</p> <p>2 A. Well, it's my understanding that folks</p> <p>3 don't do it for free, and so I would</p> <p>4 expect that you would require a contract</p> <p>5 to do the dip.</p> <p>6 Q. And you don't know if there is one?</p> <p>7 A. I don't believe we use you for this</p> <p>8 service, so I don't think there is.</p> <p>9 Q. Okay. Well, let's presume that you have a</p> <p>10 contract with a third party --</p> <p>11 A. Okay.</p> <p>12 Q. -- that you're paying every time BellSouth</p> <p>13 does a dip; okay?</p> <p>14 A. Every time you do a dip?</p> <p>15 Q. BellSouth does a dip, because it's the</p> <p>16 BellSouth switch dipping.</p> <p>17 A. Okay.</p> <p>18 Q. Right?</p> <p>19 A. Okay.</p> <p>20 Q. Isn't that how it works?</p> <p>21 A. But into their database.</p> <p>22 Q. Correct.</p> <p>23 A. Okay.</p> <p>24 Q. Is that how it works? Do you agree that's</p> <p>25 how it works?</p>	<p style="text-align: right;">Page 200</p> <p>1 A. Correct.</p> <p>2 Q. And does Xspedius have contracts with all</p> <p>3 third-party CNAM databases?</p> <p>4 A. I don't know, but I don't know -- I've</p> <p>5 never had a complaint in that regard. No</p> <p>6 one's ever come to me and said the same</p> <p>7 thing that we've said to you, I'm not</p> <p>8 getting Caller ID anymore.</p> <p>9 Q. Do you know if Xspedius has any contracts</p> <p>10 with third-party providers to provide</p> <p>11 Caller ID information?</p> <p>12 A. I don't handle those contracts, so I don't</p> <p>13 know, but that's the only indication</p> <p>14 whatsoever as to whether such contracts</p> <p>15 exist.</p> <p>16 Q. If you believe that it's in the public</p> <p>17 interest, wouldn't you agree with me that,</p> <p>18 if BellSouth has to contract with every</p> <p>19 single CNAM database provider, then</p> <p>20 Xspedius should as well?</p> <p>21 A. If we've got the vocal complaints that</p> <p>22 you've gotten from all the carriers,</p> <p>23 absolutely. I'm not aware of any</p> <p>24 complaints.</p> <p>25 Q. And the complaints that you are referring</p>

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<p>1 to, how many are there?</p> <p>2 A. I mean, I'm aware, I'd say, of probably</p> <p>3 ten over the years. Been doing this a</p> <p>4 long time. But that doesn't mean -- that</p> <p>5 to me means there could be 50 to 100. I</p> <p>6 mean, what I hear about is the tip of the</p> <p>7 iceberg.</p> <p>8 And by the way, we don't spend</p> <p>9 money to arbitrate issues that don't cause</p> <p>10 major problems for our customer base.</p> <p>11 This is an expensive arbitration.</p> <p>12 Q. I don't doubt that.</p> <p>13 If -- For those ten that you're</p> <p>14 familiar with, are those Xspedius-specific</p> <p>15 complaints?</p> <p>16 A. They're from Xspedius' customers.</p> <p>17 Q. And who was the RBOC providing the</p> <p>18 switching in that instance?</p> <p>19 A. In some cases, it was BellSouth.</p> <p>20 Q. Okay. And of the ten, there are some</p> <p>21 other RBOCs involved?</p> <p>22 A. I mean, this is a general recollection</p> <p>23 going back over eight years. I'd say</p> <p>24 easily at least ten from BellSouth over</p> <p>25 the last eight years.</p>	<p>1 A. Not in any -- Not in my shop. I mean,</p> <p>2 there's certainly customer care records of</p> <p>3 some kind, but I don't think they can --</p> <p>4 we can sort them by the problem.</p> <p>5 We used to keep what we call</p> <p>6 BellSouth bad act reports that were</p> <p>7 funneled to regulatory. And we do that,</p> <p>8 but much more sporadically now.</p> <p>9 Q. Do you have any information -- any</p> <p>10 documents -- any documents that would</p> <p>11 support your claim that there have been at</p> <p>12 least ten instances over the last eight</p> <p>13 years where an Xspedius customer has</p> <p>14 complained about lack of Caller ID</p> <p>15 information resulting from BellSouth's</p> <p>16 acts?</p> <p>17 A. Not as I sit here, no.</p> <p>18 Q. All right. Do you believe that BellSouth</p> <p>19 has a 251 obligation to dip third-party</p> <p>20 CNAM databases?</p> <p>21 A. Yes.</p> <p>22 Q. Why?</p> <p>23 A. It's part of the interconnection process.</p> <p>24 Q. Do you know if the USTA II decision</p> <p>25 addressed this issue?</p>
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<p>1 This was a problem on day one,</p> <p>2 Columbus, Georgia, in November '96. We</p> <p>3 turned up our first switch. Within a</p> <p>4 matter of a month, we started getting</p> <p>5 complaints about this. I distinctly</p> <p>6 remember this being a very big issue for</p> <p>7 us in the January/February time frame of</p> <p>8 1997. That's how far back this goes. In</p> <p>9 some ways, it's hard to believe that it</p> <p>10 hasn't been rectified.</p> <p>11 Q. Since that one instance in '96 or '97 --</p> <p>12 A. There wasn't one in --</p> <p>13 Q. Those are the ten, in '96 and '97?</p> <p>14 A. No. Over the years, this has continued to</p> <p>15 crop up and often with BellSouth.</p> <p>16 Q. But not only with BellSouth?</p> <p>17 A. I honestly -- Predominantly, my</p> <p>18 recollection is that this has been</p> <p>19 predominantly been a BellSouth issue, but</p> <p>20 I wouldn't say that we haven't had</p> <p>21 problems with other carriers.</p> <p>22 Q. When was the last instance involving a</p> <p>23 BellSouth and Xspedius customer?</p> <p>24 A. I can't say.</p> <p>25 Q. Do you keep records of that information?</p>	<p>1 A. I don't know whether it addressed this</p> <p>2 issue.</p> <p>3 THE WITNESS: Can I take a coffee</p> <p>4 break?</p> <p>5 MR. MEZA: We can take a</p> <p>6 five-minute break. That would be fine.</p> <p>7 (RECESS.)</p> <p>8 BY MR. MEZA:</p> <p>9 Q. Mr. Falvey, does Xspedius perform a</p> <p>10 transit function for other carriers?</p> <p>11 A. Typically, no.</p> <p>12 Q. Are there instances where it would?</p> <p>13 A. Not that I can think of.</p> <p>14 Q. I believe you told me yesterday that there</p> <p>15 is some type of transit traffic scenarios</p> <p>16 where you bypass the BellSouth network?</p> <p>17 A. It wouldn't be transit to speak of, I</p> <p>18 guess. I'm thinking of if our</p> <p>19 customer -- two of our customers wanted</p> <p>20 to talk to each other and they are both on</p> <p>21 my facilities, then it would never touch</p> <p>22 the BellSouth network.</p> <p>23 Q. What is your understanding of transit</p> <p>24 traffic?</p> <p>25 A. Transit traffic is a function where our</p>

14 (Pages 201 to 204)

<p style="text-align: right;">Page 205</p> <p>1 customer wants to call the customer of 2 another carrier but we're not directly 3 interconnected, and so we transit the call 4 through the BellSouth switch. 5 Q. There are situations where you are 6 directly connected with another carrier; 7 correct? 8 A. Yes. 9 Q. All right. Is there a situation where you 10 provide the transit function for a carrier 11 based upon your fiber network? 12 A. Transit function for a carrier -- I mean, 13 not likely. We have not -- Some carriers 14 have started to create a tandem switching 15 product, but Xspedius has not done that. 16 Q. So when either the call is passed through 17 the BellSouth network or you're directly 18 connected with the carrier? 19 A. Correct. 20 Q. Okay. When BellSouth is transiting the 21 call for you, are you being charged by the 22 terminating carrier for that call? 23 A. If we have an agreement in place, then 24 it's possible, but, more likely than not, 25 we -- it's a de minimus amount of</p>	<p style="text-align: right;">Page 207</p> <p>1 I could answer the question better. 2 Q. Have you ever attempted to negotiate with 3 an ICO for origination and termination of 4 calls? 5 A. Yes. 6 Q. Which ones? 7 A. There was just a whole bunch of them in 8 Texas. SBC actually got the Texas 9 Commission to sign off on a provision like 10 that, so you could have a tiny -- you 11 know, five calls a month and you'd have to 12 go out and negotiate these agreements. So 13 we had a whole bunch of them in Texas. We 14 had to hire a consultant. It was 15 extremely expensive. A big waste of time 16 and resources, but the answer is, yes, 17 I've done that. 18 Q. Any negotiations in BellSouth's regions? 19 A. Not that I'm aware of. 20 Q. Are you currently paying bills sent by 21 BellSouth for transiting your traffic to 22 ICOs for termination? 23 A. We don't have a transit rate in our 24 agreement. 25 Q. Are you paying BellSouth -- or reimbursing</p>
<p style="text-align: right;">Page 206</p> <p>1 traffic, more likely than not in balance, 2 and so we have a de facto bill and keep 3 arrangement. 4 Q. When you say "de facto", you're saying 5 that there is no actual contract between 6 you and the terminating carrier for bill 7 and keep; is that correct? 8 A. Or a tariff, correct. 9 Q. Do you know if BellSouth is being billed 10 by the terminating carrier for transiting 11 the call and for actually being billed as 12 the originator of the call? 13 A. I don't, no. I don't know what you're 14 being billed for. 15 Q. Do you have any agreements with ICOs for 16 termination of traffic? 17 A. Not that I'm aware of. 18 Q. Do you know if your existing 19 interconnection agreement requires you to 20 have an agreement with the terminating 21 carrier? 22 A. I know that some of them did historically 23 have some language in that regard, but for 24 the most part, we have not agreed to those 25 provisions. If I could see the contract,</p>	<p style="text-align: right;">Page 208</p> <p>1 BellSouth for paying the ICO for hauling 2 the call to the ICO and then the ICO 3 billing BellSouth because it believes it 4 is the originator of the call? 5 MR. CAMPEN: Objection to the form 6 of the question. 7 A. Now, that's up to BellSouth to 8 demonstrate, I mean, whether -- that 9 they're not the originator of the call. 10 The fact of the matter is, in the 11 SS7 world, everybody knows where the call 12 originates. 13 Q. Are you receiving bills from ICOs today? 14 A. No. 15 Q. Would you pay a bill sent by an ICO based 16 upon SS7 information? 17 A. Only if there was a contract or a tariff, 18 if there was some basis for the rate. We 19 don't just pay on minutes of use. We pay 20 rates out of contracts and tariffs. 21 Q. But do you know if an ICO has a tariff? 22 A. Not that I'm aware of. 23 Q. It's your understanding ICO does not have 24 a tariff? 25 A. I mean, not that I'm aware of. I'm not</p>

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<p>1 aware of any bills received from an 2 ICO -- 3 Q. So would you -- 4 A. -- for that kind of scenario. 5 Q. -- would you agree with me that, based 6 upon your position, that you have no 7 incentive whatsoever to enter into 8 negotiations with ICOs? 9 A. No. 10 Q. Why not? 11 A. If the traffic volumes justify billing and 12 collecting activities, then there would be 13 an incentive to do it. But where we have 14 de minimus traffic volumes and they are 15 roughly in balance, then in those 16 circumstances, no incentive. Now, if you 17 start to get into significant volumes, 18 yes, we would have an incentive -- 19 Q. How many -- 20 A. -- or an imbalance. Right? 21 Q. How many minutes a month do your customers 22 send to ICOs? 23 A. This issue's never come with up with an 24 ICO, so I have had no reason to look into 25 it.</p>	<p>1 started to state a hypothetical. 2 Q. In that instance, do you agree that 3 Xspedius should reimburse BellSouth for 4 the charges imposed upon it by the ICO? 5 A. Absolutely not. 6 Q. Why not? 7 A. If I were to enter into an agreement with 8 an ICO, it would work both ways. It would 9 run both ways. The first thing I would 10 say though is, this is a waste of your 11 energy and resources, my time, energy, and 12 resources, because we don't have 13 sufficient traffic flows. They're roughly 14 in balance. There's no point in doing an 15 agreement. 16 But if we're going to do it, 17 and -- we're going to do it both ways. 18 And then we'll make sure that in this 19 waste of time process that I get my fair 20 share back. I'm not paying one way. And 21 the arrangement that you have 22 hypothesized, I'm not getting any money 23 back. And it was an agreement, if it 24 existed, that I had no awareness of. So 25 there's no way I should have to pay in</p>
Page 210	Page 212
<p>1 Q. Could it be because they don't know that 2 you're the originator of the call? 3 A. I don't know why they wouldn't. We pass 4 SS7 information with every call. 5 Q. If you had to guess, what would be the 6 percentage of traffic that you believe is 7 going from an Xspedius to an ICO? 8 MR. CAMPEN: Objection to the form 9 of the question. 10 A. I'm not here to guess. I mean, I'm 11 uncomfortable guessing, you know, under 12 oath. 13 Q. Have you not guessed or speculated over 14 the past two days? 15 A. I mean, I've made every effort not to, 16 honestly. I mean, I've -- so -- As 17 little as possible. De minimus. I 18 actually did say it was de minimus. 19 Q. Presume with me that BellSouth is paying 20 ICOs on your behalf for calls that you 21 originate to ICOs as a result of its 22 transit function; okay? Would you agree 23 with that? 24 A. I will agree to presume that, to presume 25 -- that we're working -- that you have</p>	<p>1 those circumstances. It's one thing if I 2 knew about the agreement in advance and 3 there was some kind of notice, but I think 4 it's un-American for me to have to pay you 5 for a contract that you did behind my back 6 without any knowledge on my part and -- 7 and basically stole money out of my pocket 8 without my knowledge. 9 Q. What are you talking about? 10 A. Transit traffic. 11 Q. What contract, and where did we do it 12 behind your back? 13 A. In your hypothetical, you agreed that I'm 14 going to give money to someone else. Let 15 me give you a hypothetical back. I go to 16 Henry and I say, I'll give you a hundred 17 dollars on Jim's behalf; okay? And then I 18 go and you say, yeah, that's great. I'll 19 take a hundred dollars. And then I come 20 back to you and I say, you owe me a 21 hundred dollars. 22 Q. Well, let me change your hypothetical. 23 A. And you go, well, I didn't even know 24 you were agreeing to give away my money. 25 And you say, well, it doesn't matter. You</p>

<p style="text-align: right;">Page 213</p> <p>1 owe me a hundred dollars. 2 Q. Would you agree with me that your 3 customers send traffic to ICOs? 4 A. Yes. 5 Q. In that instance, are you aware of any ICO 6 that is sending you a bill for terminating 7 that call? 8 A. No. They know my -- They could find out 9 my phone number and call me and haven't 10 done that. 11 Q. And It's your understanding that the ICO 12 can determine from the SS7 signaling who 13 the originator of the call actually is? 14 A. Yes, or by calling me; right? Certificate 15 of providers are listed at the Commission. 16 Q. Is it your opinion that you also receive 17 minutes -- or you terminate calls 18 originated from ICO customers? 19 A. De minimus, yes. 20 Q. Are you billing the ICO? 21 A. No. 22 Q. Do you know the -- whether or not the ICO 23 is the originator of the call? 24 A. Yes. 25 Q. Why don't you bill them?</p>	<p style="text-align: right;">Page 215</p> <p>1 minimus. 2 Q. What do you consider to be de minimus? 3 A. Less than 1 percent. As to any given ICO, 4 less than 1 percent. 5 Q. What's the aggregate number of minutes to 6 an ICO? 7 A. To an ICO? 8 Q. All ICOs. 9 A. I mean, it's way less than a T-1. 10 Q. What -- 11 A. Than the amount of traffic that would 12 occupy a T-1. 13 Q. You just told me that for a particular 14 ICO, it's less than 1 percent? 15 A. Correct. 16 Q. What is it for all ICOs in BellSouth's 17 region? 18 A. I don't know. 19 Q. What is it for all ICOs -- 20 A. It's immaterial to me. 21 Q. -- anywhere Xspedius operates? 22 A. I don't know. 23 Q. Then how do you know the traffic for one 24 ICO is less than 1 percent? 25 A. Because if it got to be much higher than</p>
<p style="text-align: right;">Page 214</p> <p>1 A. Because it's a waste of time and energy. 2 It's a de minimus amount of traffic every 3 month. 4 Q. How do you know it's de minimus if you 5 can't even tell me how many minutes a 6 month you're sending to an ICO? 7 A. Because we have reports, and if it was 8 significant, it would show up on the 9 reports. 10 Q. What reports? 11 A. Local traffic reports. 12 Q. How often are they produced? 13 A. Every month. 14 Q. When was the last time you saw one? 15 A. I don't know. It's probably an exhibit to 16 a complaint against BellSouth. 17 Q. How long ago was that? 18 A. I mean, I've seen the summaries more 19 recently than that. 20 Q. And what percentage of your traffic is 21 being originated or terminating from -- 22 A. De minimus. It wouldn't even show up on 23 the report hardly. I mean, It would be 24 somewhere way down at the bottom, if it 25 was on the report at all. It's de</p>	<p style="text-align: right;">Page 216</p> <p>1 that, our billing expert would say, hey, 2 Jim, you might want to think about billing 3 so and so, and we'd work it through the 4 billing department and we could start 5 billing them. 6 Q. So. Fundamentally, you just don't want to 7 pay for traffic that you believe should be 8 reconciled with the bill and keep 9 arrangement? 10 MR. CAMPEN: Objection to the form 11 of the question. 12 Q. Is that right? 13 A. No. I mean, I wouldn't summarize it that 14 way. 15 Q. You don't want to pay any amounts that 16 BellSouth paid on your behalf to ICOs 17 because you believe that the appropriate 18 arrangement should be bill and keep; 19 correct? 20 A. Or mutual compensation. 21 Q. Or mutual compensation? 22 A. Certainly not oneway compensation, oneway 23 behind the back, now you owe it to me 24 compensation. 25 Q. You are free to negotiate with the ICO to</p>

17 (Pages 213 to 216)

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1 establish what the rates will be for your
2 termination of their traffic; correct?
3 A. Correct.
4 Q. To date, you have not done that?
5 A. I haven't billed them, either. They're
6 trying to bill me without negotiating it.
7 I think it's un-American.
8 Q. And you just told me that an ICO had never
9 sent you a bill.
10 A. They're sending it through you. How is
11 that not sending it to me?
12 Q. Well, why aren't you billing them back for
13 traffic that you terminate?
14 A. Because I never agreed to any of this.
15 This is just coming out in some commission
16 docket in Georgia for the first time.
17 News to me.
18 Q. Fundamentally, you agree that when local
19 traffic is being terminated, the
20 terminating party has the right to bill
21 the originating party reciprocal
22 compensation?
23 A. Correct.
24 Q. Okay.
25 A. Unless the parties agree to bill and keep.

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1 Q. Unless the parties agree to bill and
2 keep.
3 You have not entered into any such
4 bill and keep arrangement with an ICO;
5 correct?
6 A. I haven't entered into any arrangement
7 with any ICO.
8 Q. And it's your opinion today that traffic
9 that you are sending to ICOs is being
10 terminated by the ICOs?
11 A. Yes.
12 Q. What happens if BellSouth decides not to
13 transit your information any more or your
14 call?
15 A. I think you'd be violating your
16 interconnection obligations.
17 Q. Do you believe that BellSouth has to
18 provide that service for free?
19 A. I think that a TELRIC rate is appropriate.
20 Q. Do you think that BellSouth should have to
21 provide that service for free?
22 A. No. TELRIC is cost plus a reasonable
23 profit. I just answered the question.
24 Q. So if the ICO charges -- if the ICO
25 charges BellSouth a TELRIC charge for

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1 terminating your traffic, would you pay
2 BellSouth that charge?
3 A. Hell, no.
4 Q. Why not?
5 A. Well, as BellSouth, I wouldn't pay it.
6 Q. Do you --
7 A. As BellSouth, I wouldn't pay it, and then
8 there's no charge to be paid by anyone.
9 Q. So you would have no objection to
10 BellSouth refusing to pay traffic that it
11 terminated -- or that it transitted on
12 your behalf to an ICO?
13 A. Why would you pay to terminate my
14 traffic? I mean, if you agreed to that,
15 that's your problem. I never would have
16 agreed to that if I were BellSouth.
17 Paying to terminate someone else's
18 traffic?
19 Q. Or not --
20 A. It's ludicrous.
21 Q. You've misconstrued the question. Let me
22 try again.
23 A. Sure.
24 Q. Would you be willing to pay -- or strike
25 that.

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1 If BellSouth refuses to pay the
2 ICO the charges associated with what the
3 ICO charges BellSouth for terminating the
4 call, would you have an objection to that?
5 A. No.
6 Q. Do you know what states BellSouth has an
7 obligation to pay ICOs for transit traffic
8 terminated pursuant to a commission order
9 or contract?
10 A. No. I know that it's an issue in Georgia
11 right now, and it has not yet been
12 resolved by the Commission.
13 Q. Do you consider a settlement agreement to
14 be a contract?
15 A. Yes.
16 Q. Look on page 87 of your North Carolina
17 rebuttal testimony. Exhibit 2.
18 A. Rebuttal?
19 Q. Yeah. Starting on line 8 to line 11.
20 A. Okay.
21 Q. Is it your opinion that the charges that
22 ICOs are attempting to impose upon
23 BellSouth for transiting your traffic is
24 unauthorized?
25 A. I think that, unless they've been ordered

<p style="text-align: right;">Page 221</p> <p>1 by someone to do that, it's unauthorized. 2 Q. Extraneous? Do you believe these charges 3 are extraneous? 4 A. Yes. 5 Q. Why? 6 A. Because it's not your traffic. 7 Q. Are you willing to sit down with an 8 ICO -- with the ICOs to resolve this 9 issue? 10 A. I have, and I'm participating in the 11 Georgia docket. 12 Q. And what is your understanding of how the 13 Georgia docket is proceeding? 14 A. The Georgia ICOs and BellSouth went off 15 into a back room and cooked up a deal that 16 was highly prejudicial to everybody else 17 on the docket. And they filed it with the 18 Commission. 19 And then I believe there was a 20 hearing. There was a hearing. And now 21 it's going to eventually go to the 22 Commission for a decision. 23 Q. And what position were you advancing in 24 the Georgia docket? 25 A. Essentially the same thing that I'm saying</p>	<p style="text-align: right;">Page 223</p> <p>1 Q. Okay. Is it your testimony today that you 2 will refuse to transition elements that 3 are no longer provided pursuant to Section 4 251? 5 MR. CAMPEN: Objection to form of 6 the question. 7 A. Let me put it this way. You're playing 8 basketball and you have the ball. It's 9 not incumbent upon me to take the ball and 10 carry it down to your basket and then put 11 it in the basket for you. It's my 12 obligation to comply with the law, the 13 rules of the game by not fouling you, by 14 not doing anything against the rules. But 15 it's your ball to move down the field. 16 And we'll cooperate in good faith, as we 17 have in the past. We've done this for 18 eight years, and we've done an awful lot 19 of work with your company. But the 20 obligation to move the ball forward in 21 this case is on BellSouth. 22 Q. Will you be creating a list regardless of 23 who initially identifies the circuits or 24 services that need to be transitioned? 25 A. I will review the list that you provide to</p>
<p style="text-align: right;">Page 222</p> <p>1 here, which is that it's up to the parties 2 to determine whether traffic billing is 3 appropriate and enter into contracts as 4 necessary. 5 Q. And "the parties", you mean the CLEC and 6 the ICO? 7 A. Exactly. 8 Q. Okay. Let's talk about the transition of 9 elements -- of unbundled elements to a 10 tariffed service or resale. 11 Is it the Joint Petitioners or 12 Xspedius' position that it will create a 13 list of circuits or services that it 14 believes should be transitioned? 15 A. No. 16 Q. Why not? 17 A. We believe -- We don't want to transition 18 any. 19 Q. Are you going to comply with the law? 20 A. Yes. 21 Q. Do you believe that that compliance will 22 require you to transition some things from 23 UNEs to non-UNEs? 24 A. It remains to be seen, but it seems likely 25 at this point.</p>	<p style="text-align: right;">Page 224</p> <p>1 me. 2 Q. And what will you review it against? 3 A. Against our understanding of the 4 obligations set out by the FCC and the 5 state commissions. 6 Q. Presume BellSouth gives you a spreadsheet 7 with all the circuits and elements that 8 need to be transitioned to whatever you 9 decide. How are you going to reconcile 10 the BellSouth list with your belief as to 11 whether the identification of those 12 circuits and services is correct? 13 A. Using the tools -- standard industry 14 tools, the commissions are going to give 15 us some guidance as to what should be 16 eliminated. And we'll go back and look at 17 that guidance and -- you know, it's very 18 open right now, you know, where it's going 19 to come from. Likely from some of these 20 state commission dockets where they start 21 to nail down which wire centers are 22 affected and so on, and so we would just 23 go back and review your list against 24 whatever the standard is -- whatever the 25 legal standard is.</p>

19 (Pages 221 to 224)

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<p>1 Q. Okay. Maybe we're not understanding each 2 other. I'm going to have a list that says 3 circuit X, Y, Z is affected by the rule -- 4 new rule -- 5 A. Uh-huh. 6 Q. -- and, thus, needs to be transitioned. 7 A. Okay. 8 Q. Will you confirm that circuit X, Y, Z is, 9 in fact, one of those circuits? 10 A. Yeah. 11 Q. Will you? 12 A. Oh, yes. Whether it is or is not, 13 correct. 14 Q. How well you confirm that? What 15 information will you review to determine 16 that circuit X, Y, Z is, infect -- is an 17 affected -- not infected -- circuit? 18 A. I don't know. 19 Q. Okay. 20 A. Because the final rules, the order's not 21 even out there. 22 Q. Well, I'm not asking you to determine what 23 the final rules say. But I would presume 24 that, as a business policy and based upon 25 the precedent and behavior of the parties,</p>	<p>1 to what types of circuits are currently in 2 place with BellSouth. 3 Q. Let's say that BellSouth identifies 4 circuits and services that it believes 5 needs to be transitioned. And you review 6 it and say, aha, they've missed a few. 7 Are you going to voluntarily identify 8 those missed circuits and services? 9 A. Again, we don't want to transition any 10 services. So if I wanted to transition 11 those, then I might identify them. I'm 12 really not comfortable with answering 13 questions in the hypothetical, and I'll 14 tell you why. Because there may be a 15 circumstance where we see circuits that if 16 we were to keep them in place, it would be 17 a violation of state or federal law. 18 And at that point, it seems to me, 19 you know, we'd have to make sure we're not 20 in violation of state or federal law. But 21 where the state and federal law hasn't 22 been written yet, it's kind of hard for me 23 to answer the question. 24 Q. Well, I think you just did, but I don't 25 know if you agree with it. I mean -- So</p>
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<p>1 you're not going to accept BellSouth's 2 list as being factually accurate, 3 presuming that we even agree on what the 4 law says? 5 MR. CAMPEN: Objection to the form 6 of the question, if that's a question. 7 MR. MEZA: That's fine. 8 Q. Or are you? That's the question. Are you 9 going to take and accept BellSouth's 10 identification of circuits that need to be 11 transitioned? 12 A. Well, we'll go into our circuit inventory, 13 right, and that's where we'll find out 14 whether those are, in fact, circuits that 15 we have with BellSouth. And I would 16 expect that -- based on past experience, 17 that part will be a no-brainer. 18 Q. Okay. 19 A. The challenge today, as I sit here, is to 20 say what baseline we're going to bounce 21 that against in terms of whether those 22 circuits should be transitioned. 23 Q. What is the circuit inventory? 24 A. Circuit inventory is -- In our systems, 25 we could generate reports any which way as</p>	<p>1 let me try again. BellSouth sends you a 2 list of circuits. 3 A. Uh-huh. 4 Q. You determine that under your 5 interpretation of the law, whatever it may 6 be -- 7 A. Uh-huh. 8 Q. -- that BellSouth has not identified all 9 the circuits that you believe need to be 10 transitioned. What will you do in that 11 instance? 12 A. I'm not sure there would be an independent 13 inquiry by our company as to the whole 14 universe and all these wire centers and 15 fiber collocators and so on. I'm going to 16 review your list. 17 Q. And what if you determined that there are 18 circuits and services missing on that 19 list? 20 A. If someone stumbled across that in the 21 process -- 22 Q. Yeah. 23 A. -- it seems to me that we would have 24 to -- if it's no longer -- if it would 25 be illegal for us to continue to purchase</p>

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1 that as a UNE, then we'd have to identify
2 it to you.
3 Q. Under your proposal, if after receiving
4 notice of circuits that need to be
5 transitioned from BellSouth, you do
6 nothing for 31 days, you state that
7 BellSouth can disconnect the circuit or
8 service; correct?
9 A. I think that's the way our proposal
10 works. I'd have to take a closer look at
11 it though.
12 Q. Sure. Go ahead. Look on attachment 4.
13 MR. CAMPEN: Exhibit 4, I believe.
14 MR. MEZA: Yeah. Excuse me.
15 That's right.
16 Q. Exhibit 4. 1.11.1 of attachment 2.
17 It's attachment 2, Mr. Falvey.
18 A. Attachment -- oh, at the back?
19 Q. No, it should be -- do you not see an
20 attachment 2?
21 A. No. I'm not understanding this document.
22 Attachment 1. Because it doesn't say the
23 attachments across the top. Hang on one
24 second. Let me see if the table of
25 contents help. Doubtful.

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1 Q. It's after attachment 1.
2 A. See, these agreements here...
3 Q. There you go.
4 A. Thanks.
5 Q. Sure. 1.11.1.
6 A. Okay. Give me a moment to review it.
7 Q. Sure.
8 (PAUSE.)
9 A. Okay.
10 Q. All right.
11 A. So the answer is that you could disconnect
12 the circuits, provided that you have not
13 received a dispute.
14 Q. Correct. In that instance where we have
15 not heard from you 31 days -- or after 30
16 days, not submitted a dispute, is it your
17 intention to waive any rights you may have
18 regarding the disconnection of that
19 circuit?
20 A. Yeah. I mean, subject to this language,
21 yes.
22 MR. MEZA: I don't have anything
23 further. Mr. Culpepper may have some
24 questions for you.
25 THE WITNESS: Okay.

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1 BY MR. CULPEPPER:
2 Q. Good morning, Mr. Falvey.
3 A. Good morning.
4 Q. Let me ask you some questions about
5 attachments 6 and 7, which, I think, are
6 part of that Exhibit 4.
7 MR. CAMPEN: Yes.
8 A. Yes, it is.
9 Q. Yeah. Let's start with issue 86B
10 concerning disputes over unauthorized
11 access to CSR information. Can you tell
12 me, Mr. Falvey, what CSR stands for?
13 A. It's a customer service record.
14 Q. Tell me what's your understanding of a
15 CSR. What's on it?
16 A. A customer service record tells you who
17 the customer is, what services he's
18 currently purchasing.
19 Q. Has Xspedius and BellSouth ever had any
20 disputes regarding unauthorized access to
21 CSR information?
22 A. Not that I'm aware of as I sit here. It's
23 been a long eight years, but I don't think
24 we have.
25 Q. Could we turn to the language that's

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1 in -- it's in attachment 3 and section
2 2.5.5.3?
3 A. Here it is. Do you have a page number? I
4 guess not.
5 Q. On my copy, it's page 7 of attachment 3.
6 A. Oh, okay.
7 MR. CAMPEN: The problem is, of
8 course, the attachments are not divided
9 with tabs. It's hard to find for all of
10 us.
11 A. Can we take a quick break?
12 MR. CULPEPPER: Yeah. Let's go
13 off the record.
14 (DISCUSSION OFF THE RECORD.)
15 Q. Mr. Falvey, let's take a look at the Joint
16 Petitioners' proposed language in
17 attachment 6, section 2.5.5.3. And could
18 you just take a look and review the bolded
19 language for me, please?
20 A. Okay.
21 Q. Can you tell me what is meant by within a
22 reasonable time?
23 A. It could vary under the circumstances. If
24 a letter were sent, I would say, you know,
25 15 to 30 days. If I got a phone call from

<p style="text-align: right;">Page 233</p> <p>1 Pat Finley or one of you guys, then, 2 frankly, it could be three days -- two, 3 three days, business days, the amount of 4 time it would take to run that down. 5 Maybe even, you know, I'd go as slow as 6 forty-eight -- as two business days, if I 7 got a phone call. 8 Q. Why hasn't a specific time frame been 9 proposed here? 10 A. I think because the circumstances could 11 vary. For example, if you just did it in 12 writing and the letter went into the 13 stream, then a longer period would be 14 appropriate. And maybe you had -- just 15 have an inkling that something's not right 16 as opposed to someone went out into a bar 17 and heard someone bragging about what they 18 had done and tape recorded it, and you 19 called us and said, here's the guy. 20 Here's what he did. Fire him. Then 21 that -- in that case, we'd be required, I 22 believe, to respond much more quickly. 23 Q. And why didn't you propose a set period of 24 time for a verbal communication and 25 another period of time for a written</p>	<p style="text-align: right;">Page 235</p> <p>1 BellSouth is required to invoke some 2 dispute resolution if there is some type 3 of disagreement about the parties' 4 obligations under the contract? 5 A. The party that wants to have the dispute 6 resolved invokes dispute resolution. 7 Q. I understand that's what your position 8 is. My question is -- I think you said 9 when I asked you why, you said that was 10 the norm; correct? 11 And I'm asking you, is that the 12 norm in your company's current 13 interconnection agreement with BellSouth? 14 A. Yes, for in general, yes. 15 Q. Could be exceptions? 16 A. Conceivably so, 200-and-what page 17 document, so -- but I'd be surprised, 18 because in America, the plaintiff files 19 the complaint. I think in the whole 20 world. 21 Q. And as I understand this language -- you 22 tell me if I've got it wrong -- that if 23 there is a dispute over unauthorized 24 access to CSR information, what -- let me 25 strike that.</p>
<p style="text-align: right;">Page 234</p> <p>1 communication? 2 A. We'd be willing to discuss that. I don't 3 think BellSouth -- I should say neither 4 party. We didn't get into that 5 discussion, but we'd be happy to entertain 6 such a discussion. 7 Q. Now, the bolded language goes on to state 8 that it is the requesting party that is 9 required to take any dispute to the 10 dispute resolution provision of the 11 contract; is that correct? 12 A. Yes. 13 Q. Why is it that the requesting party should 14 invoke the dispute resolution provision? 15 A. That's the norm. 16 Q. When you say "that's the norm", help me 17 out. What do you mean? 18 A. Defendants don't usually bring 19 complaints. You know, the party seeking 20 resolution of an issue always moves the 21 issue forward. 22 Q. Is that the case in your current -- your 23 company's current interconnection 24 agreement with BellSouth? And when I say 25 "that", I mean, is it the case that</p>	<p style="text-align: right;">Page 236</p> <p>1 What happens while the dispute is 2 pending? 3 A. Well, we would move in good faith to 4 ensure that nothing is -- if -- if 5 something were in error -- or to put the 6 shoe on the other foot -- well, I'm not 7 sure this one works. We would move to 8 ensure that -- that there is no ongoing 9 violation. 10 Q. Tell me how you would -- what steps your 11 company or any Petitioner would take to be 12 sure there was compliance, if you will, if 13 your company is disputing the allegation 14 of noncompliance. 15 A. Can you repeat that? 16 Q. All right. What happened -- There's a 17 dispute over unauthorized access to CSR, 18 okay. And in that situation, my question 19 is, what happens while this -- while the 20 dispute is pending? 21 A. We would act in good faith to run down any 22 lead that you give us. 23 Q. Would the Joint Petitioners undertake any 24 independent investigation of allegations? 25 A. I'm not sure I understand the question,</p>

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1 "the Joint Petitioners"?
2 Q. Or your company?
3 A. Right.
4 Q. Okay.
5 A. Would we take -- We would take an
6 internal investigation.
7 Q. Do the words good faith appear in the
8 proposed language of the Joint
9 Petitioners?
10 A. I think so. I think it's -- there's a
11 global duty of good faith under the
12 contract, not in this paragraph.
13 Q. Have you got any objection to add in that
14 type of language to your proposed
15 language?
16 A. Now, my company would not have any
17 objection. I can't speak for the others,
18 but -- and I won't even guess at what
19 they might say about it.
20 Q. Could it be possible that a denial of such
21 an allegation could be made in bad faith?
22 A. Yes. Our company would not do that. That
23 is conceivable that somebody would.
24 Q. One of the other Petitioners, perhaps?
25 A. I wouldn't think so. I've worked a lot

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1 with those companies. Anything's
2 conceivable, I suppose.
3 Q. Well, let's assume -- assume with me that
4 there is some type of bad faith denial.
5 A. Uh-huh.
6 Q. Why would any such company then agree to
7 some type of expedited resolution of the
8 dispute?
9 A. That's the way the legal system works if
10 you need to have something fixed. I mean,
11 who says it's bad faith? You think it's
12 bad faith. If they thought it was bad
13 faith, they probably wouldn't be doing
14 it. They wouldn't be denying it. So
15 there are injunctive procedures in this
16 country. We can go to a court of law, and
17 there's really good injunctive procedures.
18 Q. To your knowledge, do any state
19 commissions have the authority to issue
20 any type of injunction?
21 A. Yes. I have a request for injunctive
22 relief on file at the Arkansas
23 Commission. And they will entertain it as
24 they have entertained injunctive requests
25 in the past.

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1 Q. What about any state -- any commission in
2 the BellSouth region?
3 A. I don't know. The courts have that
4 power. That's a good reason to make sure
5 that we have recourse to the courts.
6 Q. When you say "courts", what courts are you
7 talking about?
8 A. State and federal courts.
9 Q. Let's look at page 93 of your direct
10 testimony. Is it Exhibit --
11 MR. CAMPEN: 1.
12 MR. CULPEPPER: Exhibit 1, thank
13 you.
14 Q. Line 5. Exhibit 1.
15 A. Yeah.
16 Q. Can you define self-help for me?
17 A. Self-help is when you rectify a problem.
18 We think this is the way the FCC would
19 define it, all right. It's when you take
20 action independently to rectify a
21 situation that is in dispute without going
22 to a third-party decision maker or by
23 agreement with the other party. The fact
24 that it's in dispute suggests that an
25 agreement with the other party is not an

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1 option.
2 So I would just say taking care of
3 the situation in a Wild West way by just
4 firing away without worrying about taking
5 it to the decision makers with
6 jurisdiction.
7 Q. And in the context of, you know, this
8 arbitration -- or in the context of your
9 testimony, does self-help apply to
10 anything other than some type of
11 termination or suspension of service?
12 A. Suspension of ordering of new orders,
13 changes. And it could take other forms.
14 Like you could take a line and do a soft
15 disconnect or you could take it down for
16 five minutes and put it back up again.
17 We've seen everything.
18 Q. Page 93, the same line 5. You state that
19 self-help is clearly always an
20 inappropriate means of handling a contract
21 dispute. Tell me when self-help is
22 appropriate.
23 A. It's difficult for me to imagine a
24 scenario that -- maybe if there was human
25 life at stake.

23 (Pages 237 to 240)

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<p>1 You have a contract with a company 2 not to park their bus in front of the 3 driveway. The police need to get into the 4 driveway to apprehend terrorists who are 5 about to blow up the building. And so you 6 just push the damn bus out of the way. 7 Q. And I'm not sure if I follow you, but that 8 would be a situation where self-help would 9 be appropriate? 10 A. Correct. 11 Q. In your company's tariffs or contracts, do 12 they contain any self-help type of 13 provisions? 14 A. There's an enforcement provision. 15 Q. And that would be it? 16 A. Yeah. 17 Q. Does your company's tariffs and/or 18 contracts give your company the right to 19 terminate service for various reasons, 20 such as nonpayment for services? 21 A. Not when there's a dispute, not when 22 there's a valid dispute. If someone's 23 raised a dispute and said, I don't owe you 24 the money, no, we couldn't do that. 25 Q. Wouldn't do that or could not do it,</p>	<p>1 that dispute. That would be the 2 upstanding way to proceed. 3 Q. Perhaps it is, but if I go and look at 4 your carrier provisions, the ones that we 5 got last week, I'll find language that you 6 just -- you know, the language you just 7 answered with? 8 A. I don't know. We have 80 tariffs on file 9 -- more than that, 40 in each of 20 10 states. So we've got to pull the tariff 11 out and take a look at it. A lot of what 12 I'm talking about is how we proceed, how 13 we treat people. 14 Q. And how you proceed, could it be different 15 than the rights you would have under a 16 contract or a tariff? 17 A. Well, yes, actually. The rights of an end 18 user under a tariff are not comparable to 19 co-carrier obligations where we have 20 co-carriers interconnecting, doing 21 business and we're trying to make it so 22 that we are somehow evenly situated 23 vis-a-vis each other, right. We have one 24 with an essentially bottleneck control of 25 all sorts of facilities and then we have</p>
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<p>1 according to your company's tariffs and 2 contract? 3 A. It seems to me that if there's a good 4 faith negotiation, we would not do that. 5 There's a good faith negotiation, a good 6 faith claims, we would not do that. 7 Q. Okay. I appreciate the answer. My 8 question is, your company's tariffs, do 9 they contain self-help provisions? And by 10 that I mean provisions which would allow 11 your company or give your company the 12 right to terminate or suspend service. 13 A. Not in these similar circumstances to the 14 three self-help provisions that you've 15 tried to negotiate into this contract. 16 Q. So are you telling me that your company's 17 tariffs preclude Xspedius from terminating 18 service if it has a belief that its 19 customers are engaged in some type of 20 unlawful or improper use of services? 21 A. If they made good faith explanations as to 22 why it's not lawful, I think it would be 23 incumbent upon us -- not unlawful, it 24 would be incumbent upon us to seek the 25 assistance of the commissions to clarify</p>	<p>1 this other one that's kind of at the mercy 2 of that bottleneck company and, yeah, 3 we're going to see some very different 4 arrangements in the contract. We also 5 have a unnegotiated contract, and so 6 you're comparing a tariff, which is not 7 negotiated, to an negotiated contract. 8 Q. Well, I'm not sure if I limited my 9 questions to tariff or contract. I mean, 10 it would have been the same -- my 11 question -- 12 A. Yeah. 13 Q. -- was both. 14 A. I don't think we have any self-help 15 provisions in any of our contracts. 16 Q. It's -- Your testimony is no Xspedius 17 contract contains any provisions which 18 allows Xspedius to terminate or suspend 19 service of its end users? 20 MR. CAMPEN: Objection to form of 21 the question. 22 A. I'd say not if there's a good faith 23 dispute between the company and the end 24 user that's documenting the good faith 25 dispute.</p>

<p style="text-align: right;">Page 245</p> <p>1 Q. And is it your testimony that that 2 language is contained in every Xspedius 3 contract? 4 MR. CAMPEN: Objection to form of 5 the question. 6 A. No, that's not what I said. 7 Q. Well, my question, is it? Is the language 8 which would preclude Xspedius from 9 terminating or suspending service, 10 precluding termination or suspension 11 pending a dispute, is that type of 12 language -- is that language contained in 13 every or any Xspedius contract? 14 A. There's no language permitting us to 15 disconnect under those circumstances. 16 Q. So that language is contained in Xspedius' 17 contracts, is that what you're saying? 18 A. No, actually, it's not. I don't think our 19 contracts are going to have these types of 20 disconnection, sort of random 21 disconnection, you know -- imagine you try 22 to put something in the contract that 23 says, we don't care if you disagree with 24 us, we're going to rip you down. There's 25 no way anybody would agree to that in a</p>	<p style="text-align: right;">Page 247</p> <p>1 Q. Let's look back at page 93 of the direct 2 testimony, lines 14 through 16. 3 What is meant by the language 4 that's in the parenthetical? 5 A. Let me just check and see what the issue 6 is. Is it the same issue? 7 Q. Yes, it's the same issue? 8 A. The issue is the CSRs. So it's basically 9 saying you could -- what it's saying is 10 that BellSouth is indifferent to the fact 11 that a customer would want to make moves, 12 adds, and changes and all of a sudden 13 wouldn't be able to. All of our customers 14 would all of a sudden not be able to say, 15 I want to decrease the cost. I'm having a 16 hard time this month, you know, someone 17 works at, you know, whatever, the 18 company's going through tough times. I've 19 got to cut costs immediately. They call 20 me up and they say, I need to go to a 21 cheaper option. I need to cut some of 22 these add-on services. And we'd say, 23 sorry, you can't do that. BellSouth seems 24 to be indifferent to the fact that some of 25 our customers will be placed in that</p>
<p style="text-align: right;">Page 246</p> <p>1 negotiated contract. We don't care if you 2 have good faith suit, we're bringing you 3 down. 4 Q. Is that -- 5 A. There's no way any businessman would ever 6 agree to that. 7 Q. Is that language in any interconnection 8 agreement that Xspedius has with any 9 carrier? 10 A. Is what language? 11 Q. You just said it, we don't care, we'll 12 pull you down? 13 A. There is -- There are three provisions in 14 this contract that say effectively, it 15 doesn't matter if you dispute it, it 16 doesn't matter if you disagree with us, 17 we'll pull you down based on our 18 independent, sole judgment. 19 Q. What are those three provisions? 20 A. Well, I haven't memorized them. This is 21 one of them. 22 Q. This is one. 23 A. And then there's like -- somewhere around 24 103, I think there's one, but I haven't 25 memorized them.</p>	<p style="text-align: right;">Page 248</p> <p>1 predicament. 2 Q. What do you mean by the language, 3 consumers who have been disloyal to 4 BellSouth? 5 A. All of our customers have chosen not to 6 buy service from BellSouth. 7 Q. So you consider those customers to be 8 disloyal to BellSouth? 9 A. With -- Yeah, with respect to the 10 services they're purchasing from us that 11 they could have bought from BellSouth. I 12 think in some sense, yes. In fact, 13 they've all pretty much switched from 14 BellSouth, right, at some point, so 15 they've left someone and went somewhere 16 else. 17 Q. Lines 19 through 21. 18 A. Ah, yes. 19 Q. What part of BellSouth's language do you 20 consider ambiguous? 21 And that language is going to be 22 back in BellSouth version of 2.5.5.3. 23 A. All of the options that say we may do this 24 and we may do that, and so I think it's 25 ambiguous. It doesn't say that BellSouth</p>

25 (Pages 245 to 248)

<p style="text-align: right;">Page 249</p> <p>1 shall. It's all kind of up to the cat 2 toying with the mouse, what kind of a 3 swipe they'll take at the mouse. 4 Q. Can you be more specific? Can you just 5 point me out some part of the language 6 from 2.5.5, the BellSouth version here 7 that is -- 8 A. Sure. 9 Q. -- in your opinion, ambiguous? 10 A. On line 3, you use the word may, okay, 11 starting on page 7. On line 4 to the 12 right a little bit, you use the word may 13 again. Going to the next page on the 14 first line, you use the word may again. 15 On the third line down, you use the word 16 may again. On the fourth line down, you 17 use the word may again. And that's the 18 end of at least the BellSouth bolded 19 section. 20 Q. Anything else? 21 A. That -- to me, that's -- those are the 22 most striking things that I would say that 23 create this ambiguity about what will come 24 to the carrier that doesn't jump to in a 25 manner consistent with BellSouth's view of</p>	<p style="text-align: right;">Page 251</p> <p>1 those outages were deliberate or not; is 2 that correct? 3 A. Correct. 4 Q. How did -- These complaints you just 5 mentioned, how were they -- what's the 6 outcome of them, the service-related 7 complaints you just mentioned? 8 A. What usually happens is our customers go 9 down. They get very upset at us. They 10 ask us for money, and we don't have time 11 to -- and the resources to go back after 12 every outage. 13 Q. I was asking about these complaints that 14 you said your company -- 15 A. Oh, those -- that was settled for a large 16 amount of money that I can't stipulate to 17 because it's confidential, significant 18 dollars. And particularly it the Georgia 19 complaint for just -- really just horrible 20 service that we received when we turned up 21 our switching in Columbus, Georgia. 22 Q. Tell me the -- in general -- 23 A. Sure. 24 Q. -- the allegation in the complaints? 25 A. The allegation in the complaints was that</p>
<p style="text-align: right;">Page 250</p> <p>1 how the issue should be resolved. 2 Q. The same language you state that it is not 3 all clear whether BellSouth gets to pull 4 the plug while the dispute is pending, and 5 that's in lines 19 to 20. 6 Mr. Falvey, can you tell me or 7 give me any instances when BellSouth has 8 pulled the plug on services provided to 9 Xspedius? 10 A. Situations -- I mean -- let me think 11 about it. Our services have often gone 12 down over the years. Whether those 13 outages are deliberate or accidental, I 14 can't, as I sit here, document. But we 15 have filed complaints at the Georgia 16 Commission at the FCC about serious 17 service problems, and we have had all 18 sorts of issues with BellSouth's actions 19 and BellSouth's control that cause our 20 service to go down. 21 Q. Let me see if I understood you correctly. 22 There have been certain service outages, 23 and it's your testimony that there was -- 24 at least in your belief, your company's 25 belief, there was some issue as to whether</p>	<p style="text-align: right;">Page 252</p> <p>1 BellSouth was not -- did not put itself 2 in a position to comply with the Telecom 3 Act in terms of unbundling local loops and 4 -- particularly unbundling. We ordered 5 unbundled loops for a company called 6 Country's Barbecue with five locations in 7 Columbus, Georgia. And they had static on 8 the lines. They had all sorts of -- a 9 litany of service issues, and then there 10 were about six or eight other customers 11 that had all of the same problems. 12 And so the gist of the complaint 13 was that BellSouth was not ready to 14 implement the Telecom Act and generally 15 indifferent to all of these service issues 16 that our customers -- that our customers 17 experienced. 18 Q. As I read your testimony here -- and, 19 again, I read this that there is a concern 20 that BellSouth may disconnect services 21 while there is a dispute over unauthorized 22 access to CSR information; is that 23 correct? 24 A. Correct. 25 MR. CAMPEN: Objection to the</p>

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1 form.
2 Q. My question is, has BellSouth ever
3 terminated or suspended service to
4 Xspedius because -- over a dispute
5 regarding unauthorized access to CSR
6 information?
7 A. Now we're talking about just CSR
8 information. I think we said at the
9 outset that I'm not aware of the CSR issue
10 coming up between our companies, but
11 having said that, I would not want to give
12 you the right to terminate my service
13 where there's a good faith dispute
14 pending.
15 Q. So is the answer to my question, no,
16 you're not aware of any such incidents?
17 A. Not even aware of this -- of our
18 company -- I mean, to our credit, we've
19 never abused the CSR process.
20 Q. To your knowledge, there's never been an
21 issue over CSR?
22 A. Exactly.
23 Q. If there hasn't been any issue over CSR
24 information between Xspedius and
25 BellSouth, do you consider this an

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1 important issue for --
2 A. Yes, because BellSouth has exercised
3 self-help at various times over the
4 years. You stopped our orders, I mean,
5 multiple times in situations where we
6 didn't agree. You suspended our ordering
7 capability, and it kills the company. It
8 could be three days before the end of the
9 quarter, it could be at the end of the
10 month when we're trying to make our
11 numbers. We're trying to show investors
12 that we have a steady revenue flow, and
13 your company will suspend our ability to
14 order new circuits, moves, adds, changes,
15 kills us with our customer base. What do
16 you mean I can't get a move, add, or a
17 change? So this kind of self-help -- I
18 mean, the real problem with it is it's
19 also patently illegal. The FCC has said
20 self-help is not permitted.
21 Q. Can you give me a cite for --
22 A. Not as I sit here.
23 Q. It's your testimony that there's some FCC
24 order that says self-help is --
25 A. Yes.

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1 Q. -- inappropriate?
2 A. Illegal.
3 Q. Illegal?
4 A. Yes.
5 Q. So all the provisions that are in
6 Xspedius' tariffs which allow termination
7 or suspension of service are illegal?
8 MR. CAMPEN: Objection to the form
9 of the question.
10 A. As I said, that if there's a dispute,
11 self-help is -- when there is a valid
12 good faith dispute moving forward and
13 exercising self-help -- and as I've said,
14 our tariffs don't permit us -- we would
15 not disconnect someone if they had a valid
16 good faith dispute.
17 Q. Let's go on to issue 88, the appropriate
18 relation for service expedited or service
19 date advancement. Does Xspedius request
20 service expedites from BellSouth?
21 A. Yes.
22 Q. How often?
23 A. When our customers require an expedite, we
24 would expedite.
25 Q. Can you tell me how often your customers

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1 would request a service expedited?
2 A. No.
3 Q. Can you tell me whether or not
4 Xspedius -- you charge your customer for
5 a service expedite?
6 A. I think we recently put charges into
7 place. Traditionally, we have not.
8 Q. How recently?
9 A. I remember a discussion about eight months
10 to a year ago.
11 Q. What are the service expedite charges that
12 you -- your company charges its
13 customers?
14 A. I don't know.
15 Q. Any -- Can you ballpark it for me?
16 A. No.
17 Q. Would it vary at all by service or
18 product?
19 A. No. I mean, I don't know. I don't know.
20 Q. If you don't know, that's --
21 A. Yeah.
22 Q. You don't know. Tell me, what is your
23 basis for your assertion that the
24 BellSouth service expedite charge is
25 unreasonable and excessive and harmful to

<p style="text-align: right;">Page 257</p> <p>1 competition and consumers? 2 A. It's not a cost-based rate. 3 Q. How do you know that? 4 A. Because I haven't seen the cost of it. 5 Q. Is that it? 6 A. Well, that's the way TELRIC rates are 7 arrived at. There's a cost proceeding and 8 cost studies are presented, and then the 9 Commission determines what the appropriate 10 TELRIC cost-based rate should be. 11 Q. So -- 12 A. I've never -- I'd have to say I've never 13 seen BellSouth offer a TELRIC rate that 14 wasn't ordered by a Commission. 15 Q. Regarding TELRIC rates, what is the basis 16 if your assertion that a service expedite 17 charge should be priced at TELRIC? 18 A. If the service is a Telecom Act service, 19 then the expedite has to be at a 20 cost-based rate; otherwise it -- to me, 21 it renders the provisioning of the UNE an 22 annul. You can get it, but you can't 23 expedite it, then it greatly decreases the 24 value of that service, of that UNE. 25 Q. But you can expedite it; right?</p>	<p style="text-align: right;">Page 259</p> <p>1 position? 2 A. The authority is Section 251, 252 that 3 this is an integral part of ordering the 4 UNE. 5 BellSouth gets to expedite a 6 cost-based rate. If we don't, you're at 7 an unfair advantage. It doesn't matter 8 that you charge \$200 to your customer. If 9 your cost is \$50, you pick up an extra 150 10 bucks over me every time you do an 11 expedite. You can do anything you want 12 with that money to beat us in the 13 marketplace. That's why we have TELRIC 14 rates. 15 Q. And if we took a look at Section 251 and 16 252, would we find anything in those 17 sections that address service expedite 18 charges? 19 A. Yes. That 251, 252 require unbundling, 20 and unbundling without TELRIC-based 21 expedite charges is fairly meaningless. 22 Q. Mr. Falvey, did you review or help in 23 response to any of the discovery requests 24 that the Joint Petitioners received on 25 BellSouth?</p>
<p style="text-align: right;">Page 258</p> <p>1 A. Not at cost-based rates. 2 Q. Are you aware of any state commission 3 order, federal order, or any other 4 authority for the position that a service 5 expedite charge must be priced at TELRIC? 6 A. As I sit here, no, but I don't doubt that 7 such orders have been issued. 8 Q. Your testimony that's on these -- on the 9 issues on this particular issue when you 10 drafted them? 11 A. I think I said at the beginning, when you 12 say "draft", do you mean typing it into 13 the computer or giving input? I mean, 14 there are literally, you know, 20 and more 15 people that gave input into this 16 testimony. And then after two-and-a-half 17 years of cooperative discussions, an 18 attorney sat down and wrote up the 19 testimony. So I took part in the 20 collaborative process to draft the 21 testimony. 22 Q. Let's look at page 95 of your direct 23 testimony, lines 11 through 14. 24 A. Yes. 25 Q. Now, what's your authority for your</p>	<p style="text-align: right;">Page 260</p> <p>1 A. Yeah. I believe they were done by 2 company, but that's just my recollection. 3 MR. CULPEPPER: Let's go ahead and 4 mark Joint Petitioners response to 5 BellSouth Interrogatory No. 102 as the 6 next hearing exhibit. 7 (DEPOSITION EXHIBIT NO. 18 WAS MARKED.) 8 Q. All right. And this discovery -- this 9 interrogatory asks to identify all legal 10 authority with appropriate citations 11 supporting the position that a service 12 date advancement should be priced at 13 TELRIC pricing standard; is that correct? 14 A. Correct. 15 Q. And were you involved in the response that 16 was provided by the Joint Petitioners? 17 A. Yes. 18 Q. Do you see the part of the response that 19 makes reference to CFR? 47 CFR, Section 20 51.501. 21 A. Can I ask what date these were issued? 22 Q. They were issued in June, I believe, of 23 this past year. 24 A. And when were they answered? 25 Q. They were answered in December, and I</p>

<p style="text-align: right;">Page 261</p> <p>1 believe they were -- some of them were 2 originally answered in June and I think 3 they were supplemented in December. This 4 is a supplemental response dated December 5 7. 6 A. Okay. Got it. 7 MR. CAMPEN: That's correct. 8 Q. My question is the et seq part to the CFR 9 side. 10 A. Yes. 11 Q. What are you making reference to? What is 12 that making reference to? 13 A. Typically, I believe it stands for et 14 sequiter, and it means that -- if you look 15 at section 51.501 and the provisions 16 thereafter -- immediately thereafter, they 17 wouldn't perform their duty. 18 Q. Well, I'm just trying to figure out what 19 part of that CFR section you're making 20 reference to. 21 A. Uh-huh. 22 MR. CULPEPPER: So please mark 23 this as the next hearing exhibit, please. 24 (DEPOSITION EXHIBIT NO. 19 WAS MARKED.) 25 A. Okay. I've reviewed it.</p>	<p style="text-align: right;">Page 263</p> <p>1 position that mass migration services 2 should be priced at TELRIC. 3 Have you seen this discovery 4 request before, Mr. Falvey? 5 A. Yes. 6 Q. And how about the response? 7 A. Yes. 8 Q. Now, we'll get to mass migration in a 9 little bit, but just so I'm clear, tell me 10 what you're referring to when you refer to 11 47 CFR section 5.501? 12 A. The same sanctions as I just mentioned 13 through section 51.513. These are just 14 the TELRIC. They lay out how a TELRIC 15 rate is established. 16 Q. Let's go to mass migration, which is issue 17 94. Can you give me your definition of 18 mass migration? 19 A. A mass migration is when -- usually in 20 connection with purchase of a company or 21 the assets of a company, the circuits need 22 to be migrated in the BellSouth systems so 23 that there's recognition of the new 24 ownership; circuits, collocations. There 25 could be things other than circuits.</p>
<p style="text-align: right;">Page 262</p> <p>1 Q. And CFR section 51.501 is entitled subpart 2 F, pricing of elements; is that correct? 3 A. Correct. 4 Q. And on the last page of this Exhibit 5 51.601 is entitled subpart G, resale; is 6 that correct? 7 A. Yes. 8 Q. Now, what parts of section 51.501 are you 9 referring to -- 10 A I would say -- 11 Q. -- in this discovery response? 12 A. -- section 51.501 through -- through, but 13 not including, 51.515 or if you prefer 14 through 51.513. 15 Q. Are you saying through 513? 16 A. Yes, 51.513. 17 MR. CULPEPPER: And I'm going to 18 hand you one other interrogatory response, 19 same date, December 7th and ask the court 20 reporter to mark that as the next hearing 21 exhibit. Here's your copy. 22 (DEPOSITION EXHIBIT NO. 20 WAS MARKED.) 23 Q. And this is interrogatory No. 113, which 24 asks to identify all legal authority with 25 appropriate citations supporting the</p>	<p style="text-align: right;">Page 264</p> <p>1 Q. How about could you give me your 2 definition of a merger? 3 A. A merger is when two companies merge to 4 become one company, which could be one of 5 the companies or a third company. 6 Q. Can you give me a definition for 7 acquisition? 8 A. An asset acquisition? 9 Q. Well, are there more than one type of 10 acquisition? 11 A. Yes. I mean, an acquisition is when you 12 buy something. It's a purchase. 13 Q. So give me your definition of an asset 14 acquisition. 15 A. Asset acquisition, in this context, 16 relates to when a company purchases the 17 assets of a company but not the company 18 itself, some or all of the assets of a 19 company. 20 Q. Has your company been involved in any 21 asset acquisition? 22 MR. CAMPEN: Objection to form 23 question. 24 A. Yes. 25 Q. Can you tell me about them?</p>

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<p>1 A. Xspedius Management Company, which is part 2 of our broader company, purchased the 3 assets of East Buyer Communications, Inc., 4 when East Buyer was in Chapter 11. We 5 purchased a portion of East Buyer's 6 assets. 7 Q. Now, when you say Chapter 11, are you 8 referring to bankruptcy? 9 A. Correct. 10 Q. What assets of East Buyer did Xspedius 11 purchase? 12 A. We bought all of the assets of East Buyer 13 except for the assets in New York and 14 Pennsylvania. 15 Q. Were some of those assets in the BellSouth 16 region? 17 A. Yes. 18 Q. What portion of the assets? Half of them, 19 more, less? 20 A. I'm having trouble with that question. 21 I'd rather -- I don't know. I don't 22 know. 23 Q. But some of the assets were in the 24 BellSouth region? 25 A. Yes.</p>	<p>1 East Buyer assets in the BellSouth region, 2 so that one was relatively 3 straightforward. There were provisions, 4 mind you, though, in the settlement that 5 made it easier. We hit the bankruptcy 6 court, you know, we had the -- the reason 7 I mentioned it, but we had the shepherding 8 of the bankruptcy court in that 9 circumstance. 10 Q. So there was some bankruptcy court order 11 or -- that addressed some of the process 12 involved in, you know, your company's 13 acquiring the assets of East Buyer? 14 A. That's correct. It's confidential, so I 15 can't go into detail. 16 Q. Let's look at page 97. And let's look at 17 line -- lines 2 through 4 -- or through 18 5. 19 A. Okay. 20 Q. My question goes to the need -- your 21 assertion that there's a need for 22 predictable and lawfully priced process 23 for accomplishing the mass transfer of 24 customers. Do you see that language? 25 A. Yes.</p>
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<p>1 Q. And what role, if any, did BellSouth play 2 in East Buyer's acquisition of -- 3 Xspedius' acquisition of East Buyer's 4 assets? 5 A. There were some adverse motions filed and 6 as a result of -- to settle up on those 7 motions, we entered into a settlement in 8 the bankruptcy before the bankruptcy 9 court. We agreed to certain means of 10 transitioning, and then there was also a 11 settlement payable to Xspedius, 12 significant settlement payable to 13 Xspedius. Actually, it was East Buyer, 14 but I believe that one was -- East Buyer 15 was also a party to that. 16 Q. What about from a -- the actual assets 17 themselves? I'm not so much interested 18 in, you know, what happened in the 19 bankruptcy. 20 A. Sure. Okay. 21 Q. Was there some type of migration of 22 services from East Buyer to Xspedius or 23 record change or anything of that sort? 24 A. It didn't require a significant records 25 change because we purchased all of the</p>	<p>1 Q. Tell me what you mean by predictable and 2 lawfully priced. 3 A. Predictable would be that when we're 4 looking at assets to purchase, we would be 5 able to say that, based on these criteria, 6 these prices for these services, this is 7 how much it will cost us to purchase these 8 assets in the -- in the -- as -- as -- 9 in the form of charges to BellSouth for 10 transitioning the assets. 11 Lawfully priced refers to sections 12 51.501 et seq, which refers to the TELRIC 13 pricing of that process. 14 Q. Are you familiar with BellSouth's mergers 15 and acquisitions guidelines? 16 A. Yes. 17 Q. You are? 18 A. Yes. 19 Q. Have you reviewed them? 20 A. Yes. 21 Q. What parts of the guidelines, if any, give 22 you concern? 23 A. The biggest concern is that there's no 24 pricing. It's heavily weighted towards 25 BellSouth's discretion in terms of what</p>

<p style="text-align: right;">Page 269</p> <p>1 pricing would apply. There are parts that 2 I think represent progress by BellSouth, 3 so I can't, you know -- I wouldn't, you 4 know -- I don't want to look a gift horse 5 in the mouth or down play the fact that 6 BellSouth went to some effort, but, you 7 know, the money is where the rubber hits 8 the road, and there isn't a single price 9 in those guidelines. 10 Q. If the guidelines contained prices, would 11 they then be predictable? 12 A. No. 13 Q. Why do you say that? 14 A. Because there's no time lines contained in 15 the guidelines. We want to be reasonable, 16 but when you're going through an asset 17 acquisition, it is absolutely critical to 18 gain value, that you gain the synergies of 19 the acquisition and that you as quickly as 20 possible begin to operate as one company. 21 Q. Why is -- 10 to 12 on the same page 97, 22 there's the assertion that mass migrations 23 that most amount to bulk situations are 24 not extraordinarily complex and they don't 25 require BellSouth to do new and unique</p>	<p style="text-align: right;">Page 271</p> <p>1 Q. Can you tell me what they told you needed 2 to be done for a mass migration 3 specifications? 4 A. Well, I mean, the same -- well, I can't 5 tell you specifically what was said in the 6 specific conversations, but over the last 7 year, I've gained an understanding of what 8 needs to be done. 9 Q. But sitting here today, you can't tell me 10 what those specifics are that need to be 11 done? 12 A. I can. I just can't say that it was what 13 they told me. 14 Q. Okay. Thanks for the clarification. 15 A. Okay. 16 Q. And tell me again -- if you did earlier, 17 I apologize -- what needs to be done. 18 A. There's a series of functions. First is 19 the collocations sometimes need to be 20 restenciled. The circuits need to be 21 identified in the systems as now relating 22 to the company that now owns them. 23 Billing account numbers need to be changed 24 such that the bills are sent to the right 25 address and that they contain the right</p>
<p style="text-align: right;">Page 270</p> <p>1 things. Do you see that testimony? 2 A. What line is it again? 3 Q. 10 to 12. 4 A. Yes. 5 Q. What's your basis for that statement? 6 A. At the end of the day, you've done this 7 before multiple times. You've been in a 8 mass arrangement, but at the end of the 9 day, you're just making routine changes in 10 your systems. 11 Q. How do you know that? 12 A. Because I've talked to BellSouth quite a 13 bit about it and I've talked to 14 Southwestern about how they do it. 15 Q. Who did you talk to from BellSouth? 16 A. Wayne Carnes, Jim Tampa. 17 Q. Tampa. What was the first name? 18 A. Wayne Carnes, C-a-r-n-e-s. 19 Q. And these folks at BellSouth told you that 20 there was nothing new or unique or 21 extraordinarily complex? 22 A. They told me what needed to be done. And 23 then based on what they told me, it all 24 looked very familiar, things that they do 25 that gets done all the time.</p>	<p style="text-align: right;">Page 272</p> <p>1 name of the company But also so that if 2 we were to buy, you know, some additional 3 circuits in Kentucky, for example, that 4 one bill would contain my circuits that I 5 already owned and the circuits that I 6 purchased and they would have to be 7 integrated on the same bill. It also 8 permits me to send one bill on behalf of 9 one company back to BellSouth and 10 BellSouth recognizes that services that 11 I'm billing back the other way are coming 12 from one company. 13 Q. Let's look further on the same page 97, 14 lines 21 through 23. If you could, just 15 review those lines for me, please. 16 A. Yes. 17 Q. What carriers are you referring to? 18 A. Florida Digital is one that comes to mind. 19 Q. Is that FDN? 20 A. Yes. 21 Q. What obstacles, if any, did FDN experience 22 with any type of mass migration? 23 A. Just by way of context, our company bought 24 the Empire assets in Texas during the same 25 time period during which Florida Digital</p>

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<p>1 purchased the Empire assets in Florida. 2 And we touched base with them and said, 3 hey, we're having problems with all these 4 activities, collo and circuits and so on. 5 Are you guys having any problems with 6 BellSouth? Yeah, we're having the same 7 types of problems. It was at that level, 8 but a high degree of frustration with the 9 mass migration of the process. 10 Q. Any other carriers other than FDN? 11 A. NuVox. 12 Q. NuVox. Anybody else? 13 A. KMC. 14 Q. In the context of -- 15 A. I want to say they purchased some assets 16 from an independent phone company or -- I 17 can't remember what the company was, but 18 in the process of putting this together, 19 they mentioned that, oh, we did this 20 purchase and the same problems, we didn't 21 know what the price was going to be, we 22 didn't know how quickly it was going to 23 happen, and so on. 24 Q. All these examples that you've given to me 25 at a high level, have all these migrations</p>	<p>1 Q. Now, what's the name of the company that's 2 operating in the five states? 3 A. Xspedius, LLC. And the NuVox -- I don't 4 know that the NuVox has been completed, 5 but I don't have firsthand information. 6 Q. Tell me, what is -- what ICB stands for. 7 A. Individual case basis. 8 Q. Tell me why ICB is inappropriate for mass 9 migrations. 10 A. It's inappropriate because it's 11 unpredictable and not lawfully priced. 12 Q. Can you give me an example of some ICB 13 pricing that Xspedius has received that 14 you consider inappropriate? 15 A. We tried to convert unbundled loops to -- 16 special access loops to unbundled loops, 17 and the charges were in the range of 800 18 to 1,000 dollars per loop. 19 The TELRIC price is a small 20 proportion of that, and, in fact, the 21 Commission has ordered EEL conversions by 22 a mere billing change, which could be \$10, 23 just start to bill it out at a different 24 price. So that was a usurious price and 25 it's one that we've raised in this.</p>
Page 274	Page 276
<p>1 been completed? 2 A. No. 3 Q. Which ones have not? 4 A. Ours. 5 Q. When you say "ours"? 6 A. Xspedius'. 7 Q. Involved with? 8 A. The merger -- and I actually was speaking 9 more about the East Buyer side of things. 10 Q. Right. 11 A. But after that, Xspedius Management 12 Company, their investors also owned a 13 company that was in five BellSouth states, 14 and we wanted to merge that with -- the 15 five-state operation with the East Buyer 16 asset operation. And the state 17 commissions were really good. They 18 approved it in less than 30 days, 19 sometimes within a week. 20 Henry, our attorney in North 21 Carolina, was involved with the -- 22 getting our approval in North Carolina, 23 but the process of getting that completed 24 with BellSouth has proven to be fairly 25 lengthy.</p>	<p>1 Q. Yeah, it's down a little bit further. 2 When did Xspedius try this conversion, if 3 you will? 4 A. I'd say a year-and-a-half, two years ago, 5 by my recollection. 6 Q. Were you involved in the matter? 7 A. Yes. 8 Q. Who did you deal with at BellSouth? 9 A. At BellSouth on that issue? It was 10 whoever was on our account team at the 11 time. I remember there being a woman 12 involved, but I can't remember her name. 13 Q. So it was only -- anybody else at 14 BellSouth? 15 A. Those -- That's just I remember it being 16 worked by the account team. 17 Q. And did you receive some type of quote 18 from BellSouth? 19 A. Yes. 20 Q. Do you have that quote? 21 A. I would be hard pressed to locate it given 22 that it's been two years, but I swear with 23 my right hand on the Bible, it was in that 24 800 to 1,000 dollar range. 25 Q. Per loop, did you say?</p>

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1 A. Yes.
2 Q. And how many loops are we talking about in
3 total?
4 A. I can't remember. I'd say it's over --
5 it was probably over a hundred. A
6 significant number.
7 Q. Can you tell me what states were involved?
8 A. Probably several states. You know, it
9 would have been a cross-section of the
10 BellSouth states, and everywhere except
11 for Mississippi, where we don't have a
12 switch. So I would say likely the other
13 eight states.
14 Q. The last line on page 23 -- I mean, line
15 23 on page 99. Do you see that line?
16 A. Yes.
17 Q. Explain to me what you mean by the
18 statement, because only a single UNE was
19 involved.
20 MR. CAMPEN: Page 97. Maybe not.
21 MR. CULPEPPER: Yeah.
22 MR. CAMPEN: Okay.
23 A. I think what they're talking about here is
24 that it's a loop. We were doing a loop
25 instead of an EEL. The EEL conversions,

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1 the Commission -- FCC has caught up with
2 the RBOCs and ensured that TELRIC rates
3 apply. Not only TELRIC rates, but TELRIC
4 rates for an administrative change charge,
5 an administrative billing change. It's
6 explicit in several FCC EEL conversion
7 orders. But because it was a loop and not
8 an EEL, then BellSouth imposed these
9 fairly excessive charges.
10 Q. Or put another way, there was no TELRIC
11 rate applicable to the request your
12 company was making?
13 A. Correct.
14 Q. So by -- So the conversion of the request
15 was not just abandoned by Xspedius, right,
16 this special access?
17 A. Correct.
18 Q. And was there any reason other than this
19 ICB quote?
20 A. No.
21 Q. Page 100, lines 10 through 14, request in
22 a ten-day interval here for what?
23 A. For any interruption in service so that,
24 you know, the circuits need to be corded
25 in ten days, collocation should be

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1 restenciled in a ten-day interval, and the
2 work should be done quickly and
3 efficiently in an interval no longer than
4 ten days, whether they be physical or
5 administrative changes.
6 Q. So collocation-related changes are also
7 subject to this ten-day interval?
8 A. Yes.
9 Q. Is that -- Is that somewhere in your
10 testimony? I don't see it. I'm just
11 asking.
12 A. Well, I certainly think that the --
13 what's meant here is that migrations --
14 yes, let's look at line 6. Migrations
15 should be completed within ten calendar
16 days of an LSR spreadsheet submission. So
17 you might -- that LSR spreadsheet could
18 contain circuit conversions. It could
19 contain here's all the collocation work
20 that needs to be done. Some of that work
21 on the collos might be done by an
22 independent party, but we've heard even in
23 that circumstance that the collo would
24 have to be shut down. We cannot take
25 orders for 30 days, any kind of augment or

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1 change to that collocation must --
2 everything gets locked up for 30 days.
3 And that's real problematic, particularly
4 across the region, if the circuits are not
5 available or if we're at capacity and we
6 need to augment our capacity to serve a
7 new customer, that's very problematic.
8 Q. So, in your mind, just so I'm clear, the
9 ten-day interval you're proposing here
10 applies to more than simply -- or applies
11 to more than 40 customers to petition?
12 And, again, I'm just looking back at --
13 A. Right.
14 Q. -- lines 10 through 13.
15 A. Right. And I'll refer you back again to
16 line 6 on page 100 where it says that
17 migrations in general should be completed
18 within ten days. There are different
19 activities that need to take place. We
20 are willing to work with BellSouth to make
21 sure it happens smoothly, reasonably.
22 We've been able to do a lot of things with
23 your company. We just can't be at the
24 mercy of BellSouth to impose arbitrary
25 intervals and excessive pricing.

<p style="text-align: right;">Page 281</p> <p>1 Q. Have you reviewed any of the spreadsheet 2 templates that BellSouth has developed or 3 that are associated with the mergers and 4 acquisition process? 5 A. I have seen similar spreadsheets, but I 6 didn't spend a lot of time, maybe because 7 I'm a lawyer. I read the seven, you know, 8 however many pages in the guidelines and I 9 didn't spend a lot of time with the 10 spreadsheets. I just sort of said, okay, 11 there's a spreadsheet approach and that's 12 a good thing. 13 Q. Anybody within Xspedius -- 14 A. Yes. 15 Q. -- review any -- 16 A. I circulated that to the folks that would 17 be involved in that kind of a mass 18 migration to get some feedback. 19 Q. What type of feedback, if any, have you 20 received about the spreadsheets 21 BellSouth's developed? 22 A. The biggest things were it didn't include 23 pricing and it didn't include intervals. 24 Q. Anything else? 25 A. I want to say that there was an aspect to</p>	<p style="text-align: right;">Page 283</p> <p>1 A. The state commission. 2 Q. State commission. And jurisdiction 3 over -- what would be the state 4 commission authority here that you're 5 referring to? 6 A. Well, they have the authority to arbitrate 7 this interconnection agreement under 8 Section 251, and they might also have 9 independent authority under state 10 statutes. 11 Q. To arbitrate this particular agreement? 12 A. Correct. 13 Q. Anything else? 14 A. No, and to do more than that, to regulate 15 local competition. Florida and Georgia, 16 you know, a lot of states have statutes, 17 Louisiana has rules, and so on. 18 Q. Are you aware of any commissions' 19 decisions relating to updating records? 20 A. I think the OSS decisions have certainly 21 gotten into all sorts of record updates. 22 Q. What -- Tell me what you mean. What 23 other service serving configurations are 24 you referring to on this line 15 to 16? 25 A. Interconnection, collocation, resale, et</p>
<p style="text-align: right;">Page 282</p> <p>1 it where BellSouth meets and confers, 2 but -- and comes back -- you know, that 3 BellSouth would confer and then tell us 4 how we're going to proceed. It wasn't -- 5 It didn't seem to have enough of a 6 cooperative aspect to it. I vaguely 7 remember somebody bringing that issue up. 8 Q. Page 101. 9 A. Yes. 10 Q. Lines 9 through 11. My question is, what 11 are the other services you are referring 12 to on line 10? 13 A. I'm hesitating because it's a -- it seems 14 to be a defined term. It's in capitals, 15 but interconnection, for example. 16 Q. Any other examples? 17 A. Number of portability. It's part of the 18 251. Any that's covered by 251. 19 Collocation. And that's it. I think 20 that's all I can think of. 21 Q. And drop you down to lines 14 through 16 22 of the same page, page 101. 23 A. Yeah. 24 Q. All right. What Commission jurisdiction 25 are you referring to?</p>	<p style="text-align: right;">Page 284</p> <p>1 cetera. 2 Q. Put another way, services that BellSouth 3 has an obligation to provide under 251? 4 A. Correct. 5 THE WITNESS: I'd like to take a 6 health break before we go to the next 7 issue. Maybe it would be a good time. 8 MR. MEZA: Sure. 9 (RECESS.) 10 BY MR. MEZA: 11 Q. Mr. Falvey, I believe you had mentioned an 12 Empire asset purchase? 13 A. Yes. 14 Q. And has that asset purchase been 15 completed? 16 A. Yes. 17 Q. Does -- Is it in the SBC region? 18 A. Yes, Texas. 19 Q. Is SBC's involvement in that asset 20 purchase complete? 21 A. Yes. 22 Q. Did SBC provide any rates associated with 23 that asset transfer at TELRIC rates? 24 A. There is a provision in our Texas contract 25 that says that -- it's an MFN provision.</p>

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1 It says that for collocation if the rates
2 exceed the rates that SBC has charged to
3 any other carrier or the rates that I've
4 received from any other carrier, including
5 BellSouth or Qwest, the -- the -- then
6 that rate shall apply. And that if
7 there's any dispute, we can get it to the
8 commission on an expedited basis.
9 And we had to cite for that and
10 cajole and fight and threaten to go to the
11 Commission many times before we got to a
12 workable arrangement with Southwestern
13 Bell.
14 Q. So the rates are the rates that were at
15 issue -- the rate issue was resolved with
16 SBC?
17 A. Yes.
18 Q. Were the rates priced at TELRIC?
19 A. No, unfortunately, they were not. We were
20 not happy with them, but we were under the
21 gun. That's the problem in this area, is
22 that you're under the gun in a big way to
23 get those assets merged and you're forced
24 to negotiate with that pressure and duress
25 of needing to complete it ASAP. You don't

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1 have time to go to the commission to file
2 a complaint and go through a 90-day docket
3 because, by then, it's too late. So
4 that's why we wanted to get it straight
5 out front and know what the rates were
6 going to be up front.
7 Q. Would -- These rates that Xspedius agreed
8 to with SBC, would they be acceptable to
9 Xspedius to put in this interconnection
10 agreement?
11 A. No. As I just said, we were under duress
12 and we could definitely not -- in fact,
13 it was that experience that caused our
14 company to make this an issue in this
15 arbitration.
16 Q. Let's go to attachment 7, issue 95,
17 backbilling.
18 A. Yes.
19 Q. Can you define backbilling for me?
20 A. Backbilling is when you realize that you
21 didn't bill for something and you bill it
22 after the fact.
23 Q. Can you define underbilling for me?
24 A. Can you show me where I -- we -- I used
25 that term in the testimony?

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1 Q. Well, let me ask a different question. Do
2 you consider backbilling the same as
3 underbilling?
4 A. I believe we make a distinction. It's
5 kind of a fine distinction in the
6 testimony, and I want to -- let's take a
7 quick look and --
8 Q. Sure. Take your time.
9 A. Okay. Am I looking -- Maybe I'm looking
10 at the direct, that's the problem. This
11 is the rebuttal.
12 MR. CAMPEN: I was, too.
13 A. Issue 95. All right. Underbilling is
14 what leads to backbilling.
15 Q. Okay.
16 A. I was trying to think of something
17 distinct from backbilling, and that's why
18 it took me a minute.
19 But if you don't bill enough for
20 something and you discover that, you have
21 to go back and bill for it later. And
22 that's to be distinguished from
23 overbilling, which is where you bill too
24 much and then one party disputes it and
25 you have to resolve that issue.

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1 Q. Does Xspedius backbill its customers?
2 A. We have in the past, but there are some
3 fairly strict state commission
4 limitations. Usually three months is the
5 most that you can backbill -- backbill an
6 end-user customer.
7 Q. So are you saying that Xspedius backbills
8 its customers to the extent permitted by
9 applicable commission rules or
10 regulations?
11 A. Yes, with the caveat that it also has to
12 be run past the marketing department, make
13 sure it's something we think is fair and
14 won't drive customers off the network.
15 Q. The amount that Xspedius may backbill any
16 customer, is it identified on the
17 customer's bill?
18 A. Certainly we would -- we would identify
19 it as a separate charge. Probably have a
20 billing insert to clarify why it happened.
21 Q. Do you know if, in fact, that happens --
22 that process happens every time a customer
23 with Xspedius is backbilled, if there's a
24 note -- I mean --
25 A. Yeah, there is a process that our company

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<p>1 goes through when we do a backbill, and 2 there's a billing insert that's approved 3 by regulatory, and so... 4 Q. Is there -- 5 A. Yes. 6 Q. Do you review those billing -- 7 A. Yes. 8 Q. -- inserts? Anybody else? 9 A. Marketing, but I'm the only one in 10 regulatory. 11 Q. Does Xspedius backbill any customers 12 beyond 90 days? 13 A. No, we would not. Like I said, 14 backbilling of end-user customers is not 15 even permitted for the most part beyond 90 16 days. 17 Q. Where? 18 A. I mean, I have a matrix back in my office, 19 but I think most of the states have that 20 kind of limitation. 21 Q. States in the BellSouth region? 22 A. Yes, in trying to protect the small 23 end-user consumers. 24 Q. Assume for me that in North Carolina 25 backbilling is permitted up to one year.</p>	<p>1 going to react. We have a very positive, 2 constructive relationship with our 3 customers, and we need to make sure, 4 because of competition, that they can -- 5 they can go -- that they are satisfied 6 with our services, including our 7 backbilling. 8 Q. Understood. In short, there would be 9 customer relationship reasons why, despite 10 the ability to backbill a particular 11 customer, Xspedius would choose not to do 12 so? 13 A. Correct, competitive pressure in the 14 marketplace. 15 Q. So there is no 90-day limit -- blanket 16 90-day limit on Xspedius' ability to 17 backbill its customers? 18 A. In my experience, 90 days is typical. But 19 I -- like I said, I have a matrix back at 20 my office, and I'll have to see. 21 But, you know, the commissions 22 are, I believe, generally reticent to 23 allow a customer to get hit with a 24 significant backbill that goes too far 25 back, because it's a consumer issue.</p>
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<p>1 A. Of end users? 2 Q. Yes. 3 A. Okay. 4 Q. In that instance, would Xspedius backbill 5 its customers up to the one-year period? 6 A. I would in -- refer to the matrix, 7 indicate to the marketing department that 8 you have the option of going back one 9 year. Look at the marketing -- Look at 10 the volume of the charges, the reason for 11 why it wasn't billed in the first place, 12 and they would make a judgment call as to 13 how far they'd want to go from a marketing 14 perspective within the legal boundaries. 15 Q. So let me see if I've got this straight. 16 Xspedius' backbilling policy, if you will, 17 is going to be constrained by whatever the 18 applicable backbilling rule may be -- 19 commission rule may be in a particular 20 state; right? 21 A. Correct. And also constrained. We're in 22 a competitive market. A customer can go 23 anywhere they want for the service that 24 we're providing, so we have to be very 25 sensitive to what -- how the customer's</p>	<p>1 Q. Page 102, lines 8 to 11. Oh, I'm sorry, 2 direct. 3 A. Okay. 4 Q. Explain to me what the limitation or what 5 conditions are being placed on backbilling 6 in lines 8 through 11 that the Joint 7 Petitioners have proposed. 8 A. 8 through 11 is just saying that at a 9 minimum you need to identify anything 10 that's more than -- if it's not for the 11 prior billing period, right, more than one 12 billing period prior, they should be 13 invalid unless they're identified as 14 backbilling on a line item basis. 15 Q. Okay. Let's just walk through a 16 hypothetical so I understand what you're 17 trying to propose. Let's assume that a 18 service is supposed to be billed in 19 January. 20 A. Uh-huh. 21 Q. But it -- for some reason, service wasn't 22 billed for. Now, if it's billed in 23 February, does it need to be identified as 24 some backbilled amount or not under the 25 present --</p>

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1 A. Yes, it would.
2 Q. Okay. And you are proposing two
3 exceptions to this 90-day limit; correct?
4 A. Correct.
5 Q. Can you give me an example of the second
6 exception? And that is, I believe, on
7 lines 17 to 18 of page 102.
8 A. If you were to send me -- and this is a
9 hypothetical, but some CABs data or
10 something that was proved to be data that
11 should have been sent to KMC and I billed
12 it in error, then the -- three months
13 later we discovered that, I could bill
14 within this up to a limit as far as six
15 months back because it's based on
16 erroneous information supplied by
17 BellSouth. Once I got a hold of the
18 reported Xspedius CABs data, I could bill
19 that.
20 Q. So in -- So I understand you correctly,
21 this exception in number 2, the nonbilling
22 party, you're referring to BellSouth?
23 A. Yes, party to the contract. Not Xspedius.
24 Q. Could this second exception apply to some
25 erroneous information that Xspedius

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1 bill are some backbilling; right? I mean,
2 we just need to be able to distinguish
3 which charges are backbilling. I don't
4 think if there's a hundred lines that the
5 suggestion isn't that the word backbill is
6 in the margin next to all 100 lines, but
7 rather those lines are identified as
8 distinguished from non-backbilled line
9 items as backbilled line items. We'd be
10 okay with it, a well written cover letter
11 and a properly enumerated enclosure.
12 Q. On the bottom of page 104, line 22, you
13 state the statute of limitation in North
14 Carolina is three years. Do you see that?
15 A. Yes.
16 Q. Do you have a cite to a state statute?
17 A. I don't, as I sit here. This is not a
18 brief, you know. It's testimony.
19 Q. It's your testimony that the statute of
20 limitations applicable to backbilling is
21 three years; correct?
22 A. That's correct.
23 Q. But you don't know what statute supports
24 the testimony?
25 MR. CAMPEN: Objection. Asked and

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1 provides to BellSouth?
2 A. Yes.
3 Q. And just so we are clear, when you say
4 that backbilled amounts must be identified
5 as backbilling, are you saying that there
6 needs to be a line item that says, quote,
7 unquote, backbilling?
8 MR. CAMPEN: Objection to form of
9 the question.
10 A. Yeah, I think that it would make sense
11 that that term would be used in -- yes, I
12 think that in my testimony that word is in
13 quotes, so, I mean, you would probably
14 have a sentence or a line that says the
15 following charges consist of backbilling.
16 Q. What if BellSouth sent a letter that
17 stated, Xspedius, enclosed are charges for
18 two months -- you know, from two months
19 past --
20 A. As long as we can -- Go ahead.
21 Q. -- that were inadvertently left off a
22 bill?
23 A. As long as we can identify on a line item
24 basis, right. You can't have a cover
25 letter that says that enclosed in this

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1 answered.
2 A. The statute of limitations.
3 Q. Are you aware that -- Could there be more
4 than one statute of limitations in a
5 particular state?
6 A. There are usually different statutes of
7 limitations for different types of
8 actions, such as tort, et cetera.
9 Q. Tell me why there should be different time
10 periods or limits for the ability of a
11 party to raise an overbilling dispute
12 versus an underbilling dispute.
13 A. Well, we could agree to the same time
14 frame as long as we could live with --
15 live with the -- live with the two piece
16 parts of that agreement. So there's no
17 reason inherently why it shouldn't -- it
18 must be different.
19 Having said that, we've agreed to
20 two year -- to be able to go back two
21 years on dispute, and we're not willing to
22 agree to going back two years on
23 backbilled.
24 Q. Why?
25 A. Because the backbilling is much more of a

<p style="text-align: right;">Page 297</p> <p>1 surprise in the sense that it can be --</p> <p>2 you can get a bill for \$2 million out of</p> <p>3 thin air on an issue that you never</p> <p>4 expected to be an issue in a backbill.</p> <p>5 Whereas a dispute, particularly if</p> <p>6 you're a company like BellSouth and for a</p> <p>7 CLEC, if you're doing something wrong, you</p> <p>8 have much better chance that you knew</p> <p>9 about it, because other parties could have</p> <p>10 disputed the same issue.</p> <p>11 So if KMC comes in, disputes an</p> <p>12 issue, then you say, well, we'd better</p> <p>13 take a reserve because we could get this</p> <p>14 dispute from all sorts of different</p> <p>15 carriers. By contrast, a backbill comes</p> <p>16 out of thin air.</p> <p>17 Q. What if there was a cap on the amount a</p> <p>18 company could backbill, would then a</p> <p>19 two-year time period be acceptable?</p> <p>20 A. I haven't given that a moment's thought.</p> <p>21 I mean, it's something we'd be willing to</p> <p>22 discuss in negotiations. If you were to</p> <p>23 offer that, our company would certainly</p> <p>24 join with the other companies and respond.</p> <p>25 Q. What would be a reasonable cap, in your</p>	<p style="text-align: right;">Page 299</p> <p>1 should be the same when you never came to</p> <p>2 us and said, hey, could we make the two</p> <p>3 periods the same? We're concerned that</p> <p>4 you're doing it for argument sake, for</p> <p>5 public posturing as opposed to good faith</p> <p>6 effort to get to a resolution of the two</p> <p>7 issues. Not that our company's not all</p> <p>8 ears and may yet resolve these issues, but</p> <p>9 we didn't see this as a constructive step</p> <p>10 in that regard.</p> <p>11 Q. I think you said that it can take a long</p> <p>12 time to resolve a billing dispute;</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. And that time period begins once the</p> <p>16 dispute is raised; right?</p> <p>17 A. That's correct.</p> <p>18 Q. So explain to me how there's a -- why</p> <p>19 there should be different time periods,</p> <p>20 again, for overbilling versus</p> <p>21 backbilling -- billing dispute versus</p> <p>22 backbilling.</p> <p>23 A. Well, it seems there's a concern that if a</p> <p>24 dispute's not resolved within a certain</p> <p>25 time period, then it would no longer be</p>
<p style="text-align: right;">Page 298</p> <p>1 opinion?</p> <p>2 A. I can't answer that without talking to the</p> <p>3 folks in finance. It would go to the CFO</p> <p>4 level of our company. Small company.</p> <p>5 Q. Page 108 of the direct testimony.</p> <p>6 A. Okay.</p> <p>7 Q. Lines 12 through 14 -- or just 13 and</p> <p>8 14. BellSouth's proposed expansion of the</p> <p>9 issue appears largely intended to create</p> <p>10 mischief. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What did you mean by "create mischief"?</p> <p>13 A. I want to read the paragraph. It will</p> <p>14 just take me a quick second.</p> <p>15 (PAUSE.)</p> <p>16 A. I think what we're saying is that it takes</p> <p>17 a long time to resolve billing issues,</p> <p>18 because sometimes they go on for some time</p> <p>19 and there's this suggestion that they</p> <p>20 should be the same, but this -- but this</p> <p>21 proposal had not been made in</p> <p>22 negotiations, and so it's sort of a gaming</p> <p>23 of the -- to put a proposal in your</p> <p>24 testimony that you never raised with us</p> <p>25 and say, you know, these two periods</p>	<p style="text-align: right;">Page 300</p> <p>1 valid. That's how I would read this.</p> <p>2 Q. Issue 96 charges for corporate or LEC name</p> <p>3 change.</p> <p>4 A. Uh-huh.</p> <p>5 Q. What's the basis of the assertion that a</p> <p>6 LEC change is simply an administrative</p> <p>7 change, that it's not time or labor</p> <p>8 intensive?</p> <p>9 A. BellSouth has a process called gacking,</p> <p>10 which allows you to associate a bunch of</p> <p>11 different companies with -- under a</p> <p>12 single umbrella, and it's just a matter of</p> <p>13 making those changes. Should just be a</p> <p>14 matter of -- I see it as search and</p> <p>15 replace. Anywhere it said this, then you</p> <p>16 need to say that.</p> <p>17 Q. But do you know what is involved from</p> <p>18 BellSouth's perspective to make the</p> <p>19 changes in -- well, for instance, all the</p> <p>20 acronyms that are listed on your testimony</p> <p>21 at the bottom of page 108?</p> <p>22 A. It seems, like I said -- I mean, some of</p> <p>23 it's common sense that with the mergers</p> <p>24 going on in the industry that there would</p> <p>25 be a process developed that would be</p>

<p style="text-align: right;">Page 301</p> <p>1 routinized by BellSouth. 2 And, in fact, I've had 3 conversations with BellSouth where 4 BellSouth has, in fact, developed a 5 process called gacking which allows 6 BellSouth to -- for example, the NuVox and 7 the NewSouth, ACNA under an umbrella that 8 would make the two companies look like one 9 within the BellSouth systems. 10 Q. What does ACNA stands for? 11 A. Access carrier name abbreviation. 12 Q. How about OCN? 13 A. Operating company number. 14 Q. Page 110 of your direct testimony, you 15 mention that, apparently, SBC in certain 16 interconnection agreements allows for a 17 one time OCN/AECN charge. Onetime change 18 without charge. Do you see that? 19 A. Yes. 20 Q. What does the AECN stand for? 21 A. I believe it's access exchange carrier 22 number. 23 Q. What about any subsequent change, is there 24 a charge? 25 A. I'm not in the 13-state agreement, so I</p>	<p style="text-align: right;">Page 303</p> <p>1 these things to go through. I think we 2 were arbitrating this issue and we just 3 said, forget it, it's not worth it. 4 Q. Can you give me, sitting here today, any 5 other examples other than the loop special 6 access example that we had discussed 7 earlier? 8 A. I can't not think of another one. 9 Q. Let's go to issue 97, payment due date. 10 Tell me what you mean by a complete and 11 fully readable bill. That's on line 14 of 12 page 113 of the direct testimony. 13 A. The bill should have all charges. It 14 should identify what the charges are for, 15 correlate them back to the service. 16 Readable in the sense that you 17 should be able to get all the critical, 18 pertinent information by reading the bill. 19 Q. Has your company received any incomplete 20 or unreadable bills from BellSouth? 21 A. Yes. 22 Q. When? 23 A. Every month. 24 Q. Every month? 25 A. Uh-huh.</p>
<p style="text-align: right;">Page 302</p> <p>1 don't know the answer to that. 2 Q. Would you -- 3 A. No, go ahead. 4 Q. Will you agree with me your testimony says 5 here it's there's a onetime change without 6 charge implies that the second time there 7 is a charge? 8 A. I think you could infer that. 9 Q. But do you -- But you don't know? 10 A. I don't know. I know what my agreement 11 contains. Remember, I talked that certain 12 charges shouldn't be more than you've 13 charged to any other carrier than any 14 other carrier in the country has ever 15 charged you with expedited dispute 16 resolution. 17 Q. Lines 20 and 21, same page. Has your 18 company engaged in the BFR/NBR process 19 with BellSouth? 20 A. Yes. 21 Q. Can you tell me about that experience? 22 A. Well, the loop conversion process -- 23 Q. Right. 24 A. -- was at BFR/NBR, and we got back \$800 25 per circuit, and we've never gotten one of</p>	<p style="text-align: right;">Page 304</p> <p>1 Q. Do you review all BellSouth bills every 2 month that Xspedius receives? 3 A. No. 4 Q. Who does? 5 A. Billy Babb. 6 Q. What's the last name? 7 A. Billy Babb, B-a-b-b. 8 Q. Do you discuss BellSouth's bills with 9 Billy Babb every month? 10 A. Two, three times a week. Talked to him 11 yesterday. 12 Q. How many bills -- BellSouth bills does 13 Xspedius receive on a monthly basis? 14 A. Typically, there's a series of bills 15 received over the course of the month and 16 under numerous band billing account 17 numbers, and so I want to say hundreds. 18 Q. Hundreds? 19 A. Yeah. I mean, it depends what your 20 definition of a bill is. If a billing 21 account number -- We have numerous 22 billing account numbers with BellSouth, 23 and then we receive these large numbers 24 of, you know, band charges, probably four 25 or five times a month in various forms and</p>

39 (Pages 301 to 304)

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1 formats from different billing systems,
2 which is fine. The systems are what they
3 are. We just need at least 30 days to
4 make payment. We'd like the systems to
5 improve, mind you.
6 Q. Do you receive any BellSouth bills
7 electronically?
8 A. Yes.
9 Q. How many?
10 A. I don't know the exact number.
11 Q. Do you have any payment arrangements --
12 when I say "you", I mean Xspedius --
13 whereby your company is given 30 days or
14 more upon receipt of the bill to pay it?
15 A. We have 18 interconnection agreements, and
16 so I'd really have to go back and review,
17 but 30 days is typical, whether it's from
18 receipt or sending. It would probably get
19 a different answer in all 18 agreements.
20 Q. Outside of the interconnection agreements,
21 does Xspedius have any payment terms which
22 run from the receipt of a bill?
23 A. We don't -- I don't know the answer to
24 that. I don't know the answer to that.
25 Q. But Mr. -- would Billy Babb know or

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1 somebody else?
2 A. Yes.
3 Q. Page 113, lines 19 through 21. There's a
4 mention that in other commercial settings
5 in which parties have established business
6 relationships, the payor may be afforded
7 45 days or more to pay an invoice. Do you
8 see that?
9 A. Yes.
10 Q. What commercial settings are you talking
11 about?
12 A. With our attorneys. For example, those
13 are the bills that I review and pay, and
14 they're not due -- usually do an
15 engagement letter up front, and then the
16 engagement will usually have 45 or 60
17 days.
18 Q. Beyond your payment terms that your
19 company may have with its counsel, can you
20 give me an example of a commercial setting
21 where a payor has 45 or more days to pay
22 an invoice?
23 A. Car purchase, layaway, all sorts of
24 different arrangements.
25 Q. Can you give me an example in a commercial

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1 setting where services that are provided
2 continuously, such as communication
3 services, telephone service -- telephone
4 service, cable service? Tell me something
5 that -- Give me an example where a
6 recipient is given 45 or more days to pay
7 an invoice.
8 A. There might not be penalty if I were to
9 pay my -- I wouldn't expect penalty if I
10 paid my phone, gas, other utility bills in
11 45 days.
12 Q. You would not expect?
13 A. No, I think it would be -- they all say
14 30, by the way. I mean, that's just like
15 standard, like every bill I get
16 typically -- it's typically -- for that
17 kind of an end-user residential utility
18 bill is 30. But what I'm saying is that
19 if you paid it on 45 -- and I think people
20 do that all the time, and nothing happens,
21 so effectively those are 45 days.
22 Q. You're saying --
23 A. I think the other purchases are better
24 examples, layaway and car purchases and
25 things like that.

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1 Q. Do you think that a bill should be paid on
2 or before the payment due date?
3 A. No, not necessarily.
4 Q. Why?
5 A. Because the bill might not be readable.
6 Q. Soon --
7 A. And, therefore, you have to figure out
8 what the charges are. To go back to the
9 company and say, what are these charges
10 for? And you also have to file disputes,
11 which takes time and energy. So there may
12 be circumstances and maybe not ordinary
13 commercial circumstances, right. I mean,
14 all else being equal, it's perfectly there
15 and you read everything, yeah, I mean, you
16 should pay your bills by the due date.
17 Q. How long does it take your company to
18 figure out whether or not a bill is
19 comprehensible?
20 A. Okay. 45, 60 days with the volume that we
21 get from five carriers, four ILECs, plus
22 Sprint. I should say four RBOCs plus
23 Sprint. It can take some time, because we
24 spend a lot of time and energy trying to
25 figure out what's on the bill.

<p style="text-align: right;">Page 309</p> <p>1 Q. How long would it take to figure out 2 whether or not a bill is readable? 3 A. The same issue. 4 Q. 45 days? 5 A. Yeah, I mean by the time -- 6 Q. To figure out whether a bill is 7 receivable? 8 A. -- you have to -- receipt -- I mean, 9 we're not talking about legible here. 10 We're talking about readable in the sense 11 that you can understand what you're being 12 billed for. So call someone back, they're 13 on vacation for two weeks, you know, it 14 could easily run to 45 days. 15 Q. Can you give me an example of when your 16 company has not been strictly held to a 17 certain payment due date? 18 A. The payments to our attorneys, for 19 example. 20 Q. Outside of payment to your attorneys? 21 A. Well, I keep using that example because 22 those are the only bills that I pay. I 23 don't personally pay the others, and so 24 I'm just not as close to -- I'm not as 25 close to the other issues. But I know for</p>	<p style="text-align: right;">Page 311</p> <p>1 Q. Did your company -- 2 A. Resale. 3 Q. -- track the bills of any other providers? 4 A. Not that I'm aware of. 5 Q. Could have? 6 A. Could have. I think this was done to find 7 out -- you know, our guys came to us. We 8 did a call with all the billing experts. 9 They said, we have a problem here. We 10 need more time to get payment and 20 days 11 is not going to cut it. And then as we 12 got into the process, we said, hey, let's 13 put our money where our mouth is vis-a-vis 14 BellSouth and let's measure. And we 15 measured that. That's why we have a 16 BellSouth metric. Chances are the 17 measurement hasn't been done for others, 18 but I don't know for sure. 19 Q. Over what period of time was this 6.45 day 20 measurement derived from? I think you 21 mentioned it started in December 2003? 22 A. It's in my rebuttal testimony. We began 23 tracking it in December 2003, and the 24 testimony was filed in October 2004. So I 25 would say that it would be some</p>
<p style="text-align: right;">Page 310</p> <p>1 a fact that others do not get paid, you 2 know, right on 30 days and nothing 3 dramatic happens. They're just paying 4 them after 60 days, 75 days we get paid. 5 As long as we show over a period that 6 we're good for the payments, most people 7 don't raise any issues. 8 Q. Do you charge your customers late payment 9 charges? 10 A. Yes, after a point. 11 Q. After what point? After they fail to pay 12 on time? 13 A. Maybe 60, 75, something like that. We 14 assess late payment charges to BellSouth 15 for Sitcom (phonetic). 16 Q. You testified that Xspedius had some track 17 when it received BellSouth bills and it 18 received the BellSouth bills on an average 19 6.45 days after, I guess, the bill date. 20 A. Correct. 21 Q. What bills were you -- was your company 22 tracking? 23 A. All the bills from BellSouth, so it would 24 be recip, comp, cast, special access, 25 collocation, et cetera.</p>	<p style="text-align: right;">Page 312</p> <p>1 eight-month period. You know, I would say 2 four- to eight-month period. I don't have 3 the exact period here. 4 Q. Let's go to issue 101, customer deposit, 5 maximum deposit amount. 6 THE WITNESS: Can we take a lunch 7 break? It's 10 of 1. 8 MR. CULPEPPER: Let's -- Can we 9 just go off the record? 10 (DISCUSSION OFF RECORD.) 11 Q. The Joint Petitioners have proposed two 12 different caps on a maximum deposit 13 amount; correct? 14 A. Two caps? 15 Q. Yeah, one for existing customers? 16 A. Uh-huh. Correct. 17 Q. One for the new CLPs? 18 A. Yes. 19 Q. Why were two -- Why did you propose two 20 different caps? 21 A. Well, we thought it was a concession to 22 BellSouth, that if you haven't been doing 23 business with a company and you wanted to 24 impose a different standard for a new 25 company that hasn't established a history</p>

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<p>1 of what amounts typically are due month to</p> <p>2 month to and from that company, that it</p> <p>3 would be only fair to BellSouth to have a</p> <p>4 separate standard.</p> <p>5 Q. Why would you request a security deposit</p> <p>6 on a customer?</p> <p>7 A. If they -- If you felt that you could</p> <p>8 find yourself in a position where, based</p> <p>9 on experience with that customer, you</p> <p>10 would not be able to make yourself whole</p> <p>11 vis-a-vis that customer.</p> <p>12 Q. So is it fair to say that one of the</p> <p>13 reasons to request a deposit could be the</p> <p>14 credit worthiness of a customer?</p> <p>15 A. I would certainly -- That would be a</p> <p>16 factor.</p> <p>17 Q. A factor?</p> <p>18 A. Yes.</p> <p>19 Q. Could be others?</p> <p>20 A. Absolutely.</p> <p>21 Q. Such as ability to pay for services</p> <p>22 rendered, would be a factor?</p> <p>23 A. The other factor that I was thinking of</p> <p>24 was how much is that company billing</p> <p>25 BellSouth and what is -- on any given</p>	<p>1 A. No.</p> <p>2 Q. Does your company have deposit</p> <p>3 requirements or deposit provisions, if you</p> <p>4 will, in your company's sales?</p> <p>5 A. Yes.</p> <p>6 Q. What about in your customer contracts?</p> <p>7 A. I don't know. We're entitled to hold the</p> <p>8 deposits for a short period of time</p> <p>9 pursuant to commission rules, so that's an</p> <p>10 example where new customers are treated</p> <p>11 differently than older customers.</p> <p>12 Q. Page 124 of the direct testimony, line --</p> <p>13 line 6 -- line 5 and 6. What balances</p> <p>14 are you testifying to can be predicted</p> <p>15 with reasonable accuracy?</p> <p>16 A. Give me a minute to read --</p> <p>17 Q. Oh, sure.</p> <p>18 A. -- forward and back.</p> <p>19 (PAUSE.)</p> <p>20 A. These are the balances that BellSouth owes</p> <p>21 Xspedius and that Xspedius owes BellSouth</p> <p>22 over -- over time.</p> <p>23 Q. So the amounts that Xspedius was billed by</p> <p>24 BellSouth on a monthly basis can be</p> <p>25 predicted with a reasonable degree of</p>
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<p>1 day, how much money is BellSouth sitting</p> <p>2 on already?</p> <p>3 Q. Now --</p> <p>4 A. There's your security.</p> <p>5 Q. Xspedius, in your current interconnection</p> <p>6 agreement with BellSouth, BellSouth can</p> <p>7 demand up to two months' deposit; right?</p> <p>8 A. Correct.</p> <p>9 Q. Has -- Does Xspedius have a two-month</p> <p>10 deposit on hand to pay a two months'</p> <p>11 deposit to BellSouth today?</p> <p>12 A. No, there's another deposit -- an</p> <p>13 arrangement that's on -- that's been put</p> <p>14 in place.</p> <p>15 Q. Can you tell me about the arrangement?</p> <p>16 A. I believe it's a \$250,000 deposit and the</p> <p>17 agreement that BellSouth can wait 60 days</p> <p>18 before it pays its reciprocal compensation</p> <p>19 bills, which, by the way, is another</p> <p>20 example of an arrangement over 30 days.</p> <p>21 Q. Are there any other arrangements between</p> <p>22 BellSouth and Xspedius?</p> <p>23 A. No.</p> <p>24 Q. No payment arrangements that you're aware</p> <p>25 of?</p>	<p>1 accuracy?</p> <p>2 A. Correct. And the amount that BellSouth is</p> <p>3 past due on Xspedius' bills can also be</p> <p>4 monitored and predicted.</p> <p>5 Q. Rebuttal testimony on page 126.</p> <p>6 A. Yes.</p> <p>7 Q. I believe -- let's look at page -- or</p> <p>8 line, I should say, 18 through 20. You</p> <p>9 assert that BellSouth has agreed --</p> <p>10 A. Could you hold it a minute? I'm in the</p> <p>11 direct at 126.</p> <p>12 Q. Rebuttal.</p> <p>13 A. Okay.</p> <p>14 Q. I'm sorry.</p> <p>15 A. That's okay.</p> <p>16 Q. It's the next exhibit.</p> <p>17 A. It seems odds to me. It's the same page</p> <p>18 on the same topic. Okay.</p> <p>19 Q. Starting at line 18; moreover, BellSouth</p> <p>20 has agreed to lesser maximums with at</p> <p>21 least one other C-L-P, CLP. Do you see</p> <p>22 that statement?</p> <p>23 A. Yes.</p> <p>24 Q. What other CLP are you talking about</p> <p>25 there?</p>

<p style="text-align: right;">Page 317</p> <p>1 A. ITC DeltaCom. 2 Q. How do you know that? 3 A. I believe through publicly filed 4 documents. 5 Q. Let's go to page 130 of your rebuttal 6 testimony. Starting at line 12 through 7 14. 8 A. Yes. 9 Q. What evidence do you have that BellSouth 10 has filed a frivolous billing dispute? 11 A. Well, we've gotten frivolous bills in the 12 past and -- 13 Q. Define "frivolous". 14 A. What's that? 15 Q. Define frivolous. 16 A. Totally unsubstantiated and not supported 17 by the interconnection -- any 18 interconnection agreement or carrier. 19 Q. Did anybody at BellSouth acknowledge or 20 agree that a bill was frivolous? 21 A. No. We recently got a \$2 million bill 22 that has just no basis at all. 23 Q. Why do you say that? 24 A. Because it was for access charges. We're 25 sending local traffic to BellSouth, and</p>	<p style="text-align: right;">Page 319</p> <p>1 every one. And yet you're sitting on over 2 \$20 million of our revenue. That's 3 frivolous. We settled up again in the 4 bankruptcy. Again, you paid us millions 5 of dollars. We settled up earlier this 6 year, again. You paid us millions of 7 dollars earlier this year. So these 8 disputes, they're frivolous. You keep 9 filing the same issues and you keep taking 10 my money and then, you know, I go to the 11 CFO and I say, they want a deposit. And 12 they say, BellSouth wants a deposit? I 13 should get a deposit from them. Every 14 time we sit down to settle up, they pay me 15 millions of dollars. Why -- How could 16 they possibly conceivably -- even in 17 bankruptcy, they paid us millions of 18 dollars. How could that company, with a 19 straight face, demand a deposit? Those 20 are the frivolous billing disputes I'm 21 talking about. 22 Q. Can you identify for me any order or 23 opinion, some other edict or whatever you 24 want to call it, that there's a ruling 25 that BellSouth has an established practice</p>
<p style="text-align: right;">Page 318</p> <p>1 BellSouth said, no, that's not local, 2 that's long distance traffic. And, 3 therefore, a carrier that's in the mere 4 intermediary position -- if it were 5 access, we would collect switched access 6 just like you, but BellSouth sent us a \$2 7 million bill even though -- well, that's 8 enough on that. 9 Q. But here you're stating that BellSouth has 10 an established practice of filing 11 frivolous billing disputes, right, and I'm 12 asking you -- 13 A. Uh-huh. 14 Q. -- what substantiates that statement? 15 A. Well, we often find that your -- some 16 certain amount of your billing disputes 17 are not appropriate and, in fact, 18 frivolous. 19 Q. So any bill, in your opinion, that is 20 inaccurate is a frivolous bill? 21 A. There was a period of time that you had 22 \$25 million worth of disputes with us. We 23 filed all sorts of different complaints. 24 This is at East Buyer. We ended up 25 winning a hundred cents on the dollar on</p>	<p style="text-align: right;">Page 320</p> <p>1 of filing frivolous billing disputes with 2 Xspedius, or are you -- 3 A. I didn't testify that there was such an 4 order, so the answer is no. 5 Q. So this testimony on lines 12 through 14, 6 this is your opinion, or are you making 7 this as a state of fact? 8 A. It's based on a series of orders. We got 9 an order from the Georgia Commission, a 10 hundred cents on the dollar; Florida 11 Commission, hundred cents on the dollar. 12 You know, you'd thought -- you'd think 13 after those two orders that you'd pay up 14 on the remaining dollars. But then we had 15 to go and get a three-state order from the 16 AAA relating to Alabama, South Carolina, 17 Louisiana. And then we had to go out and 18 file in Kentucky. I mean, you'd think 19 after all of this, you'd start to pay the 20 dollars. But, no, the result was that you 21 appealed the ones that you could appeal. 22 You can't appeal a AAA arbitration. So 23 you appealed the other ones and you 24 starved us of over \$20 million in cash. 25 And, oh, what a surprise, East Buyer went</p>

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<div style="display: flex; justify-content: space-between;"> 1 into bankruptcy. </div> <div style="display: flex; justify-content: space-between;"> 2 When we went into bankruptcy, we </div> <div style="display: flex; justify-content: space-between;"> 3 had over \$30 million of past-due charges </div> <div style="display: flex; justify-content: space-between;"> 4 from the Bell Company. And these are the </div> <div style="display: flex; justify-content: space-between;"> 5 same Bell companies that are coming to me </div> <div style="display: flex; justify-content: space-between;"> 6 and asking me for a deposit? I don't </div> <div style="display: flex; justify-content: space-between;"> 7 think so. </div> <div style="display: flex; justify-content: space-between;"> 8 Q. And if I were to review these orders, </div> <div style="display: flex; justify-content: space-between;"> 9 someone at BellSouth would, am I going to </div> <div style="display: flex; justify-content: space-between;"> 10 find any finding that BellSouth had </div> <div style="display: flex; justify-content: space-between;"> 11 engaged or at least had an established </div> <div style="display: flex; justify-content: space-between;"> 12 practice of filing frivolous billing </div> <div style="display: flex; justify-content: space-between;"> 13 disputes? </div> <div style="display: flex; justify-content: space-between;"> 14 A. I think that an antitrust court might </div> <div style="display: flex; justify-content: space-between;"> 15 start to see a pattern and practice. </div> <div style="display: flex; justify-content: space-between;"> 16 Q. That wasn't responsive to my question, but </div> <div style="display: flex; justify-content: space-between;"> 17 I'll let it go. </div> <div style="display: flex; justify-content: space-between;"> 18 MR. CULPEPPER: I don't have any </div> <div style="display: flex; justify-content: space-between;"> 19 further questions. </div> <div style="display: flex; justify-content: space-between;"> 20 (THE DEPOSITION CONCLUDED AT 1:11 P.M.) </div> <div style="display: flex; justify-content: space-between;"> 21 </div> <div style="display: flex; justify-content: space-between;"> 22 </div> <div style="display: flex; justify-content: space-between;"> 23 </div> <div style="display: flex; justify-content: space-between;"> 24 </div> <div style="display: flex; justify-content: space-between;"> 25 </div>	<div style="display: flex; justify-content: space-between;"> 1 SIGNATURE </div> <div style="display: flex; justify-content: space-between;"> 2 I, James C. Falvey, do hereby state under </div> <div style="display: flex; justify-content: space-between;"> 3 oath that I have read the above and </div> <div style="display: flex; justify-content: space-between;"> 4 foregoing deposition in its entirety and </div> <div style="display: flex; justify-content: space-between;"> 5 that the same is a full, true and correct </div> <div style="display: flex; justify-content: space-between;"> 6 transcript of my testimony. </div> <div style="display: flex; justify-content: space-between;"> 7 Signature is subject to corrections on </div> <div style="display: flex; justify-content: space-between;"> 8 attached errata sheet, if any. </div> <div style="display: flex; justify-content: space-between;"> 9 </div> <div style="display: flex; justify-content: space-between;"> 10 James C Falvey </div> <div style="display: flex; justify-content: space-between;"> 11 </div> <div style="display: flex; justify-content: space-between;"> 12 State of </div> <div style="display: flex; justify-content: space-between;"> 13 </div> <div style="display: flex; justify-content: space-between;"> 14 County of </div> <div style="display: flex; justify-content: space-between;"> 15 </div> <div style="display: flex; justify-content: space-between;"> 16 Sworn to and subscribed before me this </div> <div style="display: flex; justify-content: space-between;"> 17 day of , 20 . </div> <div style="display: flex; justify-content: space-between;"> 18 </div> <div style="display: flex; justify-content: space-between;"> 19 Notary Public </div> <div style="display: flex; justify-content: space-between;"> 20 </div> <div style="display: flex; justify-content: space-between;"> 21 My commission expires. </div> <div style="display: flex; justify-content: space-between;"> 22 </div> <div style="display: flex; justify-content: space-between;"> 23 </div> <div style="display: flex; justify-content: space-between;"> 24 </div> <div style="display: flex; justify-content: space-between;"> 25 </div>
<div style="display: flex; justify-content: space-between;"> 1 ERRATA SHEET </div> <div style="display: flex; justify-content: space-between;"> 2 </div> <div style="display: flex; justify-content: space-between;"> 3 Case name: In the Matter of </div> <div style="display: flex; justify-content: space-between;"> 4 </div> <div style="display: flex; justify-content: space-between;"> 5 Joint Petition NewSouth </div> <div style="display: flex; justify-content: space-between;"> 6 Communications for </div> <div style="display: flex; justify-content: space-between;"> 7 Arbitration with BellSouth </div> <div style="display: flex; justify-content: space-between;"> 8 </div> <div style="display: flex; justify-content: space-between;"> 9 Deponent: James C. Falvey, Volume II </div> <div style="display: flex; justify-content: space-between;"> 10 </div> <div style="display: flex; justify-content: space-between;"> 11 Date: </div> <div style="display: flex; justify-content: space-between;"> 12 </div> <div style="display: flex; justify-content: space-between;"> 13 <div style="display: flex; justify-content: space-between;"> PAGE LINE READS SHOULD READ </div> </div> <div style="display: flex; justify-content: space-between;"> 14 <div style="display: flex; justify-content: space-between;"> / / / </div> </div> <div style="display: flex; justify-content: space-between;"> 15 <div style="display: flex; justify-content: space-between;"> / / / </div> </div> <div style="display: flex; justify-content: space-between;"> 16 <div style="display: flex; justify-content: space-between;"> / / / </div> </div> <div style="display: flex; justify-content: space-between;"> 17 <div style="display: flex; justify-content: space-between;"> / / / </div> </div> <div style="display: flex; justify-content: space-between;"> 18 <div style="display: flex; justify-content: space-between;"> / / / </div> </div> <div style="display: flex; justify-content: space-between;"> 19 <div style="display: flex; justify-content: space-between;"> / / / </div> </div> <div style="display: flex; justify-content: space-between;"> 20 <div style="display: flex; justify-content: space-between;"> / / / </div> </div> <div style="display: flex; justify-content: space-between;"> 21 <div style="display: flex; justify-content: space-between;"> / / / </div> </div> <div style="display: flex; justify-content: space-between;"> 22 <div style="display: flex; justify-content: space-between;"> / / / </div> </div> <div style="display: flex; justify-content: space-between;"> 23 <div style="display: flex; justify-content: space-between;"> / / / </div> </div> <div style="display: flex; justify-content: space-between;"> 24 <div style="display: flex; justify-content: space-between;"> / / / </div> </div> <div style="display: flex; justify-content: space-between;"> 25 <div style="display: flex; justify-content: space-between;"> / / / </div> </div>	<div style="display: flex; justify-content: space-between;"> 1 CERTIFICATE </div> <div style="display: flex; justify-content: space-between;"> 2 State of North Carolina </div> <div style="display: flex; justify-content: space-between;"> 3 County of Hamett </div> <div style="display: flex; justify-content: space-between;"> 4 </div> <div style="display: flex; justify-content: space-between;"> 5 I, Nicole Ball Fleming, a notary public in </div> <div style="display: flex; justify-content: space-between;"> 6 and for the State of North Carolina, do </div> <div style="display: flex; justify-content: space-between;"> 7 hereby certify that there came before me </div> <div style="display: flex; justify-content: space-between;"> 8 on the 16th day of December, 2004, the </div> <div style="display: flex; justify-content: space-between;"> 9 person hereinbefore named, who was by me </div> <div style="display: flex; justify-content: space-between;"> 10 duly sworn to testify to the truth and </div> <div style="display: flex; justify-content: space-between;"> 11 nothing but the truth of his knowledge </div> <div style="display: flex; justify-content: space-between;"> 12 concerning the matters in controversy in </div> <div style="display: flex; justify-content: space-between;"> 13 this cause, that the witness was thereupon </div> <div style="display: flex; justify-content: space-between;"> 14 examined under oath, the examination </div> <div style="display: flex; justify-content: space-between;"> 15 reduced to typewriting by myself, and the </div> <div style="display: flex; justify-content: space-between;"> 16 deposition is a true and accurate </div> <div style="display: flex; justify-content: space-between;"> 17 transcription of the testimony given by </div> <div style="display: flex; justify-content: space-between;"> 18 the witness </div> <div style="display: flex; justify-content: space-between;"> 19 I further certify that I am not counsel </div> <div style="display: flex; justify-content: space-between;"> 20 for, nor in the employment of any of the </div> <div style="display: flex; justify-content: space-between;"> 21 parties to this action, that I am not </div> <div style="display: flex; justify-content: space-between;"> 22 related by blood or marriage to any of the </div> <div style="display: flex; justify-content: space-between;"> 23 parties, nor am I interested, either </div> <div style="display: flex; justify-content: space-between;"> 24 directly or indirectly, in the results of </div> <div style="display: flex; justify-content: space-between;"> 25 this action </div> <div style="display: flex; justify-content: space-between;"> In witness whereof, I have hereto set my </div> <div style="display: flex; justify-content: space-between;"> hand and affixed my official notarial </div> <div style="display: flex; justify-content: space-between;"> seal, this the 31st day of December, </div> <div style="display: flex; justify-content: space-between;"> 2004 </div> <div style="display: flex; justify-content: space-between;"> </div> <div style="display: flex; justify-content: space-between;"> Nicole Ball Fleming </div> <div style="display: flex; justify-content: space-between;"> Notary Public </div> <div style="display: flex; justify-content: space-between;"> My commission expires 4/30/05 </div>

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